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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 210. /O.

THE STATE OF SOUTH CAROLINA, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR APPELLANT.

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Statement of the Case.

The claimant (appellant) began this action by a petition filed in the Court of Claims on the 27th day of June, 1901. Subsequently, to wit, on the 13th day of September, 1901, the claimant, by leave of the court, filed in lieu of its original petition an amended petition addressed to said court and setting forth as follows:

"1. That by an act of the legislature of South Carolina, approved December 24 1892, with subsequent amendments thereto, commonly known as the dispensary law, the sale of spirituous and malt liquors by private persons has been prohibited throughout said State since the 1st day of July, 1893, when said act went into effect, and the authority to make sales thereof is confined exclusively to the State and county dispensers provided for by said act; said dispensers

are, by said law, made the agents of the State for making sales of such liquors, which liquors are the property of the State, and the manner of sale is regulated by the said dispensary law; that the said liquors are sold by said dispensers only at appointed places in the State, known and designated as dispensaries, and the proceeds of said sales belong to the State; that by said dispensary law the said dispensers were, and are, prohibited from making, and they have not at any time made, any sales of spirituous or malt liquors other than of those belonging to the said State, and that all the profits and losses arising from the said sales accrue to the said State alone; that the said dispensers were, and are, salaried officers of said State, and never had any proprietary interest whatever in said liquors, nor in the profits or losses accruing from said sales, and that their salaries have never depended upon the amount of sales made by them; that the said dispensers were and are the State's appointed agents or instrumentalities to carry out its dispensary laws, which laws have for their purpose the control and the minimizing, as far as practicable, of the evils of the traffic in spirituous and malt liquors throughout said State; that said State exercises said control under and by virtue of its police power. Petitioner further avers that neither said dispensary officials nor said State are liable to pay any taxes, special or otherwise, to the United States under the revenue laws thereof, either as wholesale or as retail liquor dealers, and that they were not at any time, nor are they now, liquor dealers within the meaning of said revenue laws.

"2. That notwithstanding the premises, the United States collector of internal revenue for the State of South Carolina has for each and every year since, and including the year commencing the 1st day of July, 1893, when said dispensary law first went into effect, refused to permit the said dispensers to make any sales of spirituous or malt liquors, as by the statutes relating to said dispensaries they were required to make, unless, and until, each and every of said dispensers paid to the United States the special tax of twenty-five dollars a year imposed by the revenue laws of the United States upon retail liquor dealers, and he further required the State dispenser to pay in like manner for each and every year a special tax of one hundred and twenty-five dollars, the said collector claiming that said State dispenser was a wholesale, as well as a retail, dealer in liquors; and your petitioner

says that the said taxes were accordingly, and only because of said requirement, paid by the State dispenser for himself and for each and every of said dispensers to the said collector, the same being paid out of the funds of said dispensaries, which funds were, and still are, the property of the State of South Carolina; that said payments were made without the authority of any law of the State of South Carolina or of the United States, and were unauthorized by your petitioner; that the sums so paid to the collector of internal revenue as special taxes now amount to twenty thousand dollars, and that said money has been paid over by the said collector to the United States by its direction, and the same has been turned into its treasury. Your petitioner accordingly avers that the money so paid by the said dispensers being the money of the State, paid as aforesaid, without its authority, and without being liable to pay the same, was had and received by the United States to the use of your petitioner, and the same is legally and equitably now due and payable to your petitioner by the United States.

"Wherefore your petitioner demands judgment against the United States for the said sum of twenty thousand dollars."

Subsequently, on the 5th of November, 1902, the claimant filed a second petition containing like allegations to recover money paid under the like circumstances from the 1st day of July, 1901, to the 30th day of June, 1902; and a third petition was in like manner filed on the 9th day of October, 1903, to recover the sums paid under like circumstances "for each and every year since and including the year commencing the 1st day of July, 1901." Thus the three petitions cover the entire period of payment from the 1st day of July, 1893, to the 30th day of June, 1904, the said alleged "special taxes" having been paid in advance on the 1st day of July of each and every year since the 1st day of July, 1893.

The sum so paid to and received by the United States, as shown by the fourth finding of fact (Rec., 10), amounts to $22,840.71, for the years commencing July 1, 1895, to July 1, 1903; the sums for the years commencing July 1,

1893, and July 1, 1894, at which dates they were respectively paid, being barred by the statute of limitations.

These three petitions were consolidated under its rules by the court below and the cases heard as one case, and they have been appealed as such.

The principal questions involved in the case are:

First. Whether the internal-revenue laws apply to a State, or its agents as such; and,

Secondly. If so, whether the so-called dispensary law of the State of South Carolina is a police law within the meaning of that term; and, if so,

Thirdly. Whether the agents and instrumentalities appointed by the State to administer and enforce these police provisions can, as such, be taxed as liquor dealers under the internal-revenue laws of the United States, or in any manner whatsoever as such agents and instrumentalities.

Only in the event of the first of these questions being decided against the State does it become necessary to consider the others.

The Provisions of the Dispensary Law.

It is contended by counsel for the appellant that the provisions of the dispensary law of the State of South Carolina show it to be a police law of the highest character. No better synopsis of its provisions can be given than that to be found in the opinion of the supreme court of South Carolina in the case of State *ex rel.* Aiken, 42 So. Ca., 222, 239, which is as follows:

"The title of the act is, 'An act to declare the law in reference to and further regulate the use, sale, consumption, transportation, and disposition of alcoholic liquids or liquors, within the State of South Carolina, *and to police the*

same.' The act provides that 'all such liquors, except when bought from a State officer authorized to sell the same or in possession of one, are declared to be contraband, and against the morals, good health, and safety of the State, and may be seized whenever found,' etc. The governor, attorney general, and comptroller general shall *ex officio* constitute a State board of control to carry out the provisions of this act. The act provides for the appointment of a commissioner, who shall purchase all liquors for lawful sale under such rules and regulations as may be made by the State board of control, and furnish the same to such persons as may be designated as dispensers thereof. All liquors shall be tested by the chemist, and declared to be pure, before sale to the county dispensers. The State board of control shall appoint a county board of control, composed of three persons, who shall appoint certain officers known as 'county dispensers.' The dispensers can only sell by the package, which cannot be broken nor the liquor drunk on the premises where sold.

"The act shows that the legislature had in view the protection of the 'morals, good health, and safety of the State' in dealing with this question. Many safeguards are thrown around the sale of the liquor. The commissioner is to be an abstainer from intoxicants. The liquor is to be tested by the chemist and declared to be pure. The liquor is to be sold only by the package, which cannot be opened nor drunk where sold. The sales can only be made in daytime. Persons cannot be appointed on the county board of control who are addicted to the use of intoxicating liquors. No person can be appointed a county dispenser who has ever been adjudged guilty of violating the law relating to intoxicating liquors, nor who is keeper of a restaurant or a place of public amusement, nor who is addicted to the use of intoxicating liquors as a beverage. The county dispenser shall execute a bond in the sum of $3,000, upon which suit for damages may be brought for a violation of the provisions of the act by a wife, child, parent, guardian, employer, or other person. A majority of the voters in a township may prevent the establishment of a dispensary. The county dispenser shall take an oath therein prescribed. A printed or written request must be presented for permission to purchase. The sale shall not be made to a minor, a person intoxicated, a person in the habit of drinking to excess, nor to any person unless known to the dispenser. It prevents

the establishment of club rooms where liquors are sold. One of the beneficial results of the law is brought about by selling only for cash."

Ever since the dispensary law went into effect the United States collectors of internal revenue for the State of South Carolina have, as we have seen, refused to permit the dispensers to make any sales of liquors until they paid to the United States the special tax of twenty-five dollars a year imposed by the revenue laws of the United States upon retail liquor dealers, and they further required the State dispenser to pay in like manner a special tax of one hundred and twenty-five dollars a year as a wholesale and retail dealer in liquors. These taxes were accordingly paid by the State dispenser, for himself and the county dispensers, to the collector out of the funds of the dispensary and the money has been paid over by the latter to the United States and has been covered into its Treasury.

The case, having been argued by counsel, was duly submitted, and the Court of Claims on the 29th of February, 1904, filed its findings of facts and, as its conclusion of law thereon, dismissed the petition.

The Claim of the State.

The claim of the State is:

1st. That the provisions of the Internal Revenue Act do not apply, and were never intended by Congress to apply, to a State of the Federal Union.

2d. That the dispensary system, being a legitimate exercise by the State of its police power, and its agents being but the instrumentalities of the State to enforce its provisions, the implied limitations of the Federal Constitution forbid their taxation by the United States, even had Congress intended the internal-revenue laws to extend to them.

ARGUMENT.

The provisions of sections 3232 and 3244 of the Revised Statutes apply to "persons" and not to a State of the Federal Union or its instrumentalities of government.

By section 3232 it is provided that:

"No person shall be engaged in, nor carry on, any trade or business hereinafter mentioned until he has paid a special tax therefor in the manner hereinafter provided."

Then by section 3244 it is declared that "retail dealers in liquors shall pay twenty-five dollars." The words "retail dealers in liquors" are defined in the next paragraph as follows:

"Every *person* who sells or offers for sale, foreign or domestic distilled spirits, wines, or malt liquors otherwise than as hereinafter provided, in less quantities than five wine gallons at the same time, shall be regarded *as a retail dealer in liquors.*"

The meaning of this word "person," wherever it occurs in the internal-revenue acts, is defined by section 3140 of the Revised Statutes as follows:

"SEC. 3140. * * * Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the word 'person,' as used in this title, shall be construed to mean and include partnership, association, company or corporation, as well as a natural person."

The forty-fourth section of the internal-revenue act of July 13, 1866, had a similar defining clause, as follows:

* * * "Any word or words in any and all parts of this act, and all acts to which this act is additional, indicating or referring to person or persons, shall be taken to include

partnerships, firms, associations, *bodies corporate or politic*, or any other party whatsoever, when not otherwise designated, or manifestly incompatible with the intent hereof."

It will be observed that the section just quoted contains the words "bodies politic or corporate," a phrase which is not to be found in section 3140 of the present revenue act; the word "corporation" being substituted for it. This is important to be borne in mind, as will appear when we come to inquire into the *intent* of Congress in changing the phraseology of the later act.

The proposition which we now wish to submit is that *the word "person," as contained in section 3140, does not mean a State and was not intended by Congress to mean such.*

Every Attorney General of the United States before whom the question has come has so decided.

Four Attorneys General of the United States—Stanbery, Browning, Hoar, and Ackerman—have given to the Secretary of the Treasury written opinions, declaring that the word "person" in the act of 1866 did not include, and was not intended to include, a sovereign State of the Union.

On June 28, 1867, the question was referred by the then Secretary to Attorney General Stanbery in the case of "The Alabama Certificates," 12 Opinions, 176. I quote from his opinion:

"It would in my judgment be going further than is allowable to apply the terms bodies corporate or politic even to such a subordinate corporate body as a city. Although such bodies politic and corporate as private corporations are often held to come under the description of *persons*, I have never met with a case in which it was held that such a public corporation as a *State* could be described as a *person*. Consider that, in this declaratory clause, the legislature undertook to make its meaning clear by precise enumeration, and says in effect, that the word person, wherever used in this act, 'shall be taken to include partnerships, firms, asso-

ciations, bodies corporate or politic or other party whatsoever.' The term 'bodies corporate or politic' is the only one to include a merely private corporation, and it does not include all artificial persons of that character. Now, if it was the purpose of Congress not only to include such corporations as are not private in their foundation, but to embrace other corporations usually called public corporations, certainly that purpose would have been expressed.

"And if it was intended to include a State, why not say a State without any circumlocution? If it was intended to include a city, why not name it? But here a State or a city is not named, nor is there the usual term of description, to wit, a *public* corporation used to embrace them."

He accordingly held that the certificates or receipts issued by the State of Alabama, under authority of an act of its legislature, were not subject to the 10 per cent. tax imposed by the act of July 13, 1866, which taxed the notes "of any person" as well as the notes of a State bank or State banking association.

Again, on October 14, 1867, Mr. Stanbery endorsed this construction of the internal-revenue acts in answer to two questions propounded him by the then Secretary of the Treasury, the Hon. Hugh McCulloch, to wit:

"First. Whether railroads, owned exclusively by a State and operated by its own agents fall within the provisions of the internal-revenue act of June 30, 1864.

"Second. Do articles manufactured by convict labor in the penitentiaries or prisons of a State, for the State, come within the internal-revenue taxation?"

These questions he answered in the negative in an elaborate opinion, in which he held that the revenue acts have no application to *a State or the property of a State.* (See 12th Opinions, 277, "Taxation of State Railroads and Manufactures.")

On March 30, 1868, Attorney General Browning replied to a question submitted to him by the Secretary of the Treasury, to wit, whether the Detroit House of Correction in

manufacturing articles by convict labor for the use of the State was a "manufacturer" within the meaning of the internal-revenue laws. The previous opinions by Attorney General Stanbery were referred to as to the meaning of the word "person" in the revenue laws, and the same conclusion was arrived at by him. (See 12th Opinions, 376.) And in the "Case of the Hartford National Bank," 12th Opinions, 402, Attorney General Browning again announced a similar view of the statute.

On June 2, 1869, Attorney General Hoar was submitted a like question, and in an elaborate review of the opinions of his predecessors he came to a like conclusion (13th Opinions, 67), and June 3, 1871, Attorney General Ackerman delivered a like opinion (13th Opinions, 439).

The Federal courts have always held that the internal-revenue act does not apply to a State of the Federal Union.

But we are not confined to the opinions of the chief law officers of the Government. The question has been judicially answered by the courts. In Georgia *vs.* Atkins, a case decided in 1866 by the circuit court of the United States for the Georgia circuit, but reported in 35 Ga. Rep., 315, it was contended by the collector of internal revenue that the Western and Atlantic railroad, which was owned and operated by the State of Georgia, was liable to pay a tax of $6,004.56 under the revenue laws of the United States taxing the gross receipts of railroads. An injunction being applied for, Erskine, J., granted it, saying, in delivering the opinion of the court: "The question, narrowed to a point, is this: Does the word or term 'corporation,' for the purposes of the act and as herein used, include the term 'State?'" The learned judge considered the question at some length and then said:

"I am of the opinion that Congress intended the term 'corporation' as used in this act to be understood in its general obvious and natural meaning; and therefore it does not include the term 'State.' And so far as my limited researches go, I am unable to discover a single case in the Supreme Court, or in any of the circuit or district courts of the United States, wherein it has been decided that the term 'corporation'—body corporate or politic—when used in a statute includes a 'State,' or where the one term is used as a synonym for the other."

The Supreme Court of the United States has continuously held that the internal-revenue laws have no application to a State.

In United States *vs.* The Baltimore & Ohio R. R., 17 Wall., 322, where the constitutional question of the right of the Federal Government to tax the property of a State is elaborately considered and the right denied, Mr. Justice Hunt, delivering the opinion of the court, said:

"The term corporation as used in the acts of Congress touching internal revenue does not include a State" (citing Georgia *vs.* Atkins, *supra*).

Again he cites and quotes this language from 12 Opinions Attorney General, 176:

"The term person as used in §§ 9 and 44, *does not include a State.* The receipts or certificates issued by the State of Alabama are not subject to the tax of 10 per cent. imposed by the act of Congress of March 25th 1867."

And Mr. Justice Bradley, in his concurring opinion in the same case, said:

"I concur in the judgment of the court in this case, without deciding whether Congress can or cannot tax the property of a municipal corporation, I concur in the judgment on the ground that *Congress did not intend by the internal-revenue laws to tax property belonging to States.*"

Van Brocklin vs. State of Tennessee, 117 U. S., 151.

The Van Brocklin case was the converse of the case in 17 Wallace. It was there held, reaffirming all the previous decisions, that "property of the United States is exempt by the Constitution of the United States from taxation under the authority of a State." Turning to the converse of the proposition, Mr. Justice Gray, speaking for the court, said:

"The cases in which this court has held that the United States have no power under the Constitution *to tax either the instrumentalities or the property of a State* have a direct and important bearing upon the question before us."

He then refers to the cases of Collector *vs.* Day, 11 Wall., 113, and Dobbins *vs.* Erie County Commissioners, 16 Pet., 435, and proceeds:

"Applying the same principles, this court in United States *v.* Railroad Co., 17 Wall., 322, held that a municipal corporation within a State could not be taxed by the United States on the dividends or interest of stock or bonds held by it in a railroad or canal company, because the municipal corporation was a representative of the State, created by the State to exercise a limited portion of its powers of government, and therefore its revenues, like those of the State itself, were not taxable by the United States."

Then in anticipation, seemingly, of the very argument advanced by the Court of Claims in its opinion in this case, viz., that, when the property taxed is held by the State for the mere purpose of *profit*, such tax is valid, the opinion of the Supreme Court proceeds as follows:

"The revenues thus adjudged to be exempt from Federal taxation were not themselves appropriated to any specific use, nor derived from property held by the State or by the municipal corporation for any specific *public use*, but were part of the general income of that corporation, held for the public use in no other sense than all property and income

belonging to it in its municipal character, must be so held. The reasons for exempting *all property and income of a State*, or of a municipal corporation, which is a political division of the State, from Federal taxation, equally require the exemption of all the property and income of the National Government from State taxation."

Congress has practically declared by its subsequent legislation that the Federal revenue laws do not apply to a State.

It is interesting, however, to note that Congress itself by leaving out the words "bodies corporate or politic" in the later revenue act gave strong evidence of its intention to put the question at rest, since no one will contend that any words in the later act are more comprehensive than those omitted words, which have been held not to include a State.

Moreover, Congress on several occasions where the statute of limitations had supervened has *refunded* to cities and towns (which are constituent and aliquot parts of a State, 17th Wall., 322) taxes erroneously paid by them under the revenue law. (See United States *vs.* City of Louisville cited *ante.*) Of course if Congress had been of the opinion that the revenue laws applied to a State these refunding acts would not have been passed.

Appellant claims judgment on the ground that the word "person" as used in the Revised Statutes does not include a State.

With this consensus of opinion on the part of the legal advisers of the Government, the Supreme and circuit courts of the United States and of Congress, and also of the Revenue Office itself, as will appear elsewhere in this brief, I would be justified in leaving the question here; for if the States of the Union cannot be considered as having been regarded as ob-

jects of taxation by Congress when it passed the internal-revenue act, it follows that it is quite immaterial to the issues in this case whether Congress has or has not the constitutional power to tax a State, since it did not intend to do so. The claimant should therefore have been given judgment, and asks for it now, on the ground that the word "person" as used in the revenue act does not include a "State" of the Federal Union.

I shall, however, show that even had Congress intended to include a State, or its agents or instrumentalities, within the revenue laws as objects of taxation, such intention would have been futile, since there is no grant of such a power in the Federal Constitution. A power not expressly or impliedly granted by the Constitution is forbidden by it. The next proposition, therefore, is that:

The Constitution contains no grant of power to Congress, express or implied, to tax a State or its means and instrumentalities of government; and the exercise by Congress of a power not expressly or impliedly granted by the Constitution to it is impliedly forbidden.

This principle is well stated by Judge Cooley in his well-known work—Cooley's Constitutional Limitations—where, in speaking of the implied limitations of the Federal Constitution, he says:

"One of the implied limitations is that which precludes the States from taxing *agencies whereby the General, i. e.* [Federal], *Government performs its functions.* The reason is that, if they possessed this authority, it would be within their power to impose taxation to an extent that might cripple, if not wholly defeat, the operation of the national authority within its proper and constitutional sphere of action. 'That the power to tax,' says Chief Justice Marshall, 'involves the power to destroy; that the power to destroy may defeat and

render useless the power to create; * * * are propositions not to be denied'" (Cooley, Const. Lim., *480).

And then of the converse of this doctrine he says:

"If the State cannot tax the means by which the National Government performs its functions, neither on the other hand and for the same reasons, can the latter tax the agencies of the State governments. The same supreme power which established the department of the General Government determined that the local governments should also exist for their own purposes, and made it impossible to protect the people in their common interests without them. Each of these several agencies is confined to its own sphere, and all are strictly subordinate to the Constitution which limits them, and independent of other agencies except as thereby made dependent. There is nothing in the Constitution of the United States which can be made to admit of any interference by Congress with the secure existence of any State authority within its lawful bounds. And any such interference *by the indirect means of taxation* is quite as much beyond the power of the national legislature as if the interference were *direct* and extreme. * * * If the States possessed the authority to tax the agencies of the National Government, they would hold within their hands a constitutional weapon which factions and disappointed parties would be able to wield with terrible effect when the policy of the National Government did not accord with their views; while, *on the other hand*, if the National Government possessed a corresponding power over the agencies of the State governments, there would not be wanting a man who, in times of strong party excitement, would be willing and eager to resort to this power as a means of coercing the States in their legislation upon the subjects remaining under their control" (Cooley, Const. Lim., *483).

This doctrine is abundantly supported by the decisions of the Supreme Court of the United States, beginning with McCulloch *vs.* Maryland, 4 Wheaton, 316, 432, where the opinion was delivered by Chief Justice Marshall, and ending with the last utterance of the court upon the subject, in 1898,

in Pollock *vs.* Farmers' Loan & Trust Co., 157 U. S., 429—the memorable Income-tax case.

Thus in Collector *vs.* Day, 11 Wall., 113, we find the court using the following language through Mr. Justice Nelson:

"In respect to the reserved powers, the State is as sovereign and independent as the General Government. And if the means and instrumentalities employed by that Government to carry into operation the powers granted to it are necessarily and for the sake of self-preservation, exempt from taxation by the States, why are not those of the States depending upon their reserved powers, for like reasons, equally exempt from Federal taxation? Their unimpaired existence in the one case is as essential as in the other. It is admitted that there is no express provision in the Constitution that prohibits the General Government from taxing the means and instrumentalities of the States, nor is there any prohibiting the States from taxing the means and instrumentalities of the Government. In both cases the exemption rests upon necessary implication, and is applied by the great law of self-preservation; as any government, whose means employed in conducting its operations, if subject to the control of another and distinct government, can exist only at the mercy of that government. Of what avail are these means if another power can tax them at discretion?"

In that case the collector of internal revenue had assessed a tax upon the salary of Judge Day, a judicial officer of the State of Massachusetts, and the Supreme Court, upon the principle above quoted, held that such a tax was equivalent to a tax upon the court, and thus upon the State's instrumentalities of government, and as illustrative of the extent to which this power of taxing governmental agencies may be exercised if it be once admitted the learned justice quotes this forcible language of Chief Justice Marshall in McCulloch *vs.* Maryland, 4 Wheaton, 316, 432:

"If the States" [and the same reasoning, we have seen, applies to the National Government in its taxation of State instrumentalities] "may tax one instrument employed by the Government in the execution of its powers they may

tax any and every other instrument. They may tax the mail; they may tax the mint; they may tax patent rights; they may tax judicial process; they may tax all the means employed by the Government to an excess which would defeat all the ends of Government."

So in Pollock *vs.* Farmers' Loan and Trust Co. (Income-tax case), 157 U. S., 429, it was said:

"The Constitution contemplates the independent exercise by the nation and the State severally of their constitutional powers. As the States cannot tax the powers, the operations, or the property of the United States, nor the means which they employ to carry their powers into execution, so it has been held that the United States have no power under the Constitution to tax either the instrumentalities or the property of a State."

And in its opinion rendered upon the second hearing it reaffirmed this doctrine.

By no subterfuge of language or indirection of phraseology can the limitation upon the taxing power be evaded. It is the substance and not the shadow that is to be regarded.

"If," said the Supreme Court in the case just above cited, "it be true that by varying the form the substance may be changed, it is not easy to see that anything would remain of the limitations of the Constitution. * * * But constitutional provisions cannot be thus evaded. It is the substance and not the shadow which controls, as has indeed been established by repeated decisions of this court."

And then, with an industry commensurate with the importance of the subject, the learned justice delivering the opinion shows how in Brown *vs.* Maryland, 12 Wheat., 419, it was held that the tax on the occupation of an importer was the same as a tax on imports, and therefore void; and how, in Weston *vs.* Charleston, 2 Pet., 449, it was held

that a tax on the income of United States securities was a tax on the securities themselves; how, in Dobbins *vs.* Erie County, 16 Pet., 435, it was decided that the income from an official position could not be taxed if the office itself was exempt; how, in Almy *vs.* California, 24 How., 169, it was held that a duty on a bill of lading was the same thing as a duty on the article which it represented; how, in Northern Central R. R. *vs.* Jackson, 7 Wall., 262, a tax upon the interest payable upon bonds was a tax not upon the debtor but upon the security; and, in Cook *vs.* Pennsylvania, 97 U. S., 566, how a tax upon the amount of sales of goods made by an auctioneer was held to be a tax upon the goods themselves, and we have already seen that it has been held that a tax upon the processes of the court or the salaries of its officers was a tax upon the court itself, and thus, *indirectly*, upon the State. So, too, only recently, at its last term, the Supreme Court, in the case of United States *vs.* Fairbank, 181 U. S., 283, has held that a stamp tax on a foreign bill of lading is in substance and effect equivalent to a tax on the articles included in that bill of lading, and therefore a tax or duty on exports and in conflict with the constitutional prohibition.

One of the leading cases illustrating the limitations upon the power of Congress to tax State instrumentalities is that of United States *vs.* Balt. & O. R. R., 17 Wall., 322, heretofore cited. In that case it was said:

"The right of the States to administer their own affairs through their legislative, executive and judicial departments in their own manner through their own agencies, is conceded by the uniform decisions of this court and by the practice of the Federal Government from its organization. This carries with it an exemption of those agencies and instruments from the taxing power of the Federal Government. If they may be taxed lightly, they may be taxed heavily; if justly, oppressively. Their operation may be impeded and may be destroyed, if any interference is permitted. Hence the beginning of such taxation is not allowed on the one side and is not claimed on the other."

Upon the principles thus laid down the court held that the city of Baltimore, as a municipality, is *a portion of the governmental power of the State of Maryland*, and therefore a United States internal-revenue tax of 5 per cent. upon the interest of bonds held by the city for moneys loaned by the city was unconstitutional.

"It may be admitted that the reserved rights of the States, such as the right to pass laws, to give effect to laws through executive action, to administer justice through the courts, and to employ all necessary agencies for legitimate purposes of State government, *are not proper subjects of the taxing power of Congress*" (Veazie Bank *vs.* Fenno, 8 Wall., 533; Buffington *vs.* Day, 11 Wall., 115; Dobbins *vs.* Erie Co., 16 Pet., 435; also an excellent and elaborate note in 23 U. S. C. C. of Appeals ("C. C. A.," 515) upon the limitations of the taxing power from mutual interference of Federal and State Governments).

We may consider it, therefore, as settled as the hills that the Supreme Court will never depart from its unvaried ruling that State property and State instrumentalities in the administration of its government cannot be taxed, directly or indirectly, by the Federal Government.

Some well-considered cases from the State courts are:

Warren *vs.* Paul, 22 Ind., 276.
State *vs.* Gaston, 32 *ib.*, 1.
Jones *vs.* Keep, 19 Wis., 390.
Sayler *vs.* Davis, 22 *ib.*, 225.
Union Bank *vs.* Hill, 3 Coldw. (Tenn.), 325.
Fifield *vs.* Close, 15 Mich., 505.
Smith *vs.* Short, 40 Ala., 385.
And see also Freedman *vs.* Sigel, 10 Blatchf. C. C., 327.

When, therefore, it is claimed that under the internal-revenue laws of the United States the dispensers, who are the agents of the State of South Carolina to conduct and

carry out its dispensary law, must each pay a tax to the United States before being permitted to exercise the duties of their office, the answer is, that if the revenue law so declares, then the law is unconstitutional and void in this particular, because the tax which it imposes is a tax upon the instrumentalities by which the State, through its laws, seeks to minimize the evils of the liquor traffic within its borders—in other words, it is a tax upon the exercise of a valid police power.

"The power to tax includes the power to destroy;" therefore the police power, like the judicial power of a State, may be destroyed by Congress under the guise of taxation, if the right to tax it exists at all.

If Congress can tax the instrumentalities chosen by the State to carry out its police power, then, under the plea of the right to tax, it may tax the dispensary agents so heavily as to prevent them holding the office, and thus tax them out of existence, as it did the State banks. This would be nothing less than the power to destroy a governmental function. The point is forcibly presented by the court in Fifield *vs.* Close, 15 Mich., 505, where, in holding that so much of the revenue law as required process in State courts to be stamped as a condition to the validity of legal proceedings, is unconstitutional and void, the court said:

"If Congress has the right to impose a duty or tax upon suits in courts of the States, it follows, as an inevitable conclusion, that such restrictions may be laid upon these proceedings as to put an end to the entire action of those courts, and, for all practical purposes, to produce the same results as if they were abolished. *And the question we are called upon to decide is, therefore, whether Congress has power to put an end to the exercise of the judicial power of the State.*"

Of course in the case at bar our contention is that Congress never *intended* to include a State or its instrumentali-

ties of government within the provisions of the internal-revenue law as objects of taxation; it will only be when the court finds that we are wrong in that contention that a question similar to that suggested by the supreme court of Michigan in the above case will become the *real* question before this court, viz:

Can Congress put an end to the exercise by a State of its police power?

There is but one answer, of course, to that question.

The Practice of the Internal Revenue Office.

The Internal Revenue Office, even while it was demanding and receiving this tax from the dispensary officials, has had before it from time to time a great many cases in which this constitutional question of the limitation upon the taxing power of the United States over State instrumentalities arose in one form or another, and it has invariably conceded the principle now contended for.

I briefly note the following rulings, to be found in the annual report of the Internal Revenue Commissioner for 1898, at page 88, upon questions arising under that provision of the revenue law requiring certificates "of every description" to have a ten-cent revenue stamp affixed thereon:

"Certificates of officers of the United States given in the discharge of official functions necessary in carrying on the machinery of the Government are not liable to tax."

"Certificates issued by an officer of the State, in the interest of the State, are not liable to tax."

"Returns of birth, certificates of death, and certificates of the registrar as to the facts declared concerning birth, marriage and death are none of them held to be subject to the stamp tax imposed upon certificates in view of the fact that these certificates are given *in pursuance of State laws for public purposes.*

"Certificates issued by the health officer of New York, under State statute, relative to the employment of children,

are exempt, being issued in the discharge of a duty connected *with the operations of the Government.*

"A mercantile license, or *liquor dealer's license*, being a certificate required by the laws of a State, or ordinance of a city, *in the exercise of governmental functions* comes within the exception."

It is somewhat singular, therefore, that there should have been this anomalous and extraordinary departure in the dispensary cases. Especially may we call it anomalous and extraordinary in view of the decision of one of the ablest of the Internal Revenue Commissioners—Hon. Columbus Delano—in what is called the "Maine liquor law cases." This decision I find reported in volume XI, page 145, of the Internal Revenue Record, and I quote the whole of it because of its direct application to the present case:

"OFFICE OF INT. REVENUE,
"WASHINGTON, *April 30th*, 1870.

"C. C. ESTY, Esq.,
"*Assessor, Framington Mass.*

"SIR: D. J. Wetherbee, of Acton, Mass., in your district, writes under date of the 9th of March last, to this office as follows: 'I am a town agent for the town of Acton to buy and sell intoxicating liquors, and should like to know if I am liable to pay for, and procure a special license (special tax) to retail liquor?'

"He has been referred to you for information, and you are accordingly advised that after a careful reconsideration of this question, the office has decided to return to the old ruling upon the subject, published on page 45, of vol. V of Internal Revenue Record, which reads as follows: 'No special tax as liquor dealer is required of a county, city, or town agent appointed under what is popularly known as the "Maine liquor law" for sales made in strict accordance with the provisions of said law.'

"It is understood that under such a law the liquors are both *purchased and sold by the town*, the agent having no property in them; that a loss upon the liquor would be the loss of the town and not of the agent, this act of buying and selling being performed like all other acts of towns, etc.,

through the medium of authorized agents, and that the agents' pay does not depend upon the amount of sales.

"The late ruling of the office (p. 121, vol. X of Int. Rev. Record) which held such agents liable to special tax as liquor dealers is hereby revoked.

"C. DELANO,
"*Commissioner.*"

I know of no ruling of the office in conflict with this decision except that (made by a deputy commissioner) which it expressly refers to and overrules.

The dispensary cases are the "Maine liquor law cases" over again. The facts are identical. Why, then, should not the ruling of the Internal Revenue Office be the same in both instances?

The Commissioner of Internal Revenue has therefore in taxing the dispensary agents overruled the long-recognized practice of his office. It is said as some sort of an excuse for this action that if the State may exercise its police power over spirituous liquors by selling them through the dispensary system it may for the same reason *manufacture them* and be immune from taxation; that this will prove a tremendous loss of revenue to the Government, &c. Thus an apprehended loss of revenue is made paramount to a question of principle. We may imagine the taxing officer soliloquizing: "The amount of revenue to be lost is very large, the constitutional principle is—well, not quite so large."

Such an argument is not to be addressed to this tribunal. But I may be permitted to say that if the South Carolina dispensary system were adopted by every State of the Union the loss to the Federal revenue could be many times made up from other sources created by the increase in the moral and financial well-being of the whole country through the enforcement of this the only sensible and practicable legislation for the minimizing of the enormous evils of an unrestrained liquor traffic.*

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* See Appendix No. 3, *post.*

As to the question of its manufacture by the State, that is not before the court. If it ever gets here it will be time enough to consider it.

Jurisdiction.

No point is made in regard to the jurisdiction of the Court of Claims to hear and determine this case, nor could it well be made in view of the provisions of the act of March 3, 1887, ch. 359, 24 Sts., 505, giving jurisdiction to that court of "All claims founded upon the Constitution of the United States or any law of Congress except for pensions."

The United States holds the money collected from the dispensaries to the use of the State and must refund it.

The evidence shows that the special tax stamps were issued, not to the State, but to certain persons whose names appear thereon and who were described therein as "dispensers," and permitted to carry on the business of liquor dealers in certain places within the State described as "dispensaries," and while each stamp acknowledges the payment to have been made to the collector by the person named, yet, as matter of fact, it appears that the dispenser did not pay the money himself, but that each special tax receipt or special stamp tax, as it is sometimes called, was issued by the collector upon the filing with him of a so-called "special tax return," signed by the dispenser and accompanied by a warrant upon the State treasurer in favor of the collector, showing on its face the purpose for which it was drawn, namely, to pay the dispenser's tax as a liquor dealer. The evidence also shows that each warrant was paid by the State treasurer. We suppose it will be conceded that no statute of South Carolina at any time expressly or impliedly author-

ized the State officials to pay for this special stamp tax out of the funds of the State. The action of the State officials in thus applying the State's funds was based upon an honest mistake as to their duties. They believed the dispensaries could not be carried on legally without paying these special stamp taxes, and they believed that the money was required to pay the State's liability. This money has been paid by the revenue collector into the United States Treasury. To whom does it belong? The answer, of course, is that it is *ex æquo et bono* the money of the State of South Carolina. The United States holds it in good conscience to the use of the State.

Johnson's case, 17 Ct. Cl., 157.
Devlin's case, 12 Ct. Cl., 266.
United States *vs.* Bank, 96 U. S., 30.

In the case last cited the money had been obtained by the United States through the *fraud* of the bank's agent, who had paid into the U. S. Treasury the money of the bank to cover up his defalcation as a United States official.

In the case at bar it was obtained by an honest mistake. Fraud, accident, and *mistake* are alike equitable grounds of relief. Whoever has received money belonging to another by any of these three means is liable *ex æquo et bono* to refund it. It is plain, therefore, that the decision of the Supreme Court would have been the same had the money been obtained by mistake instead of fraud. Money paid under a mistake of law and not of fact by private parties cannot generally be recovered, but that doctrine does not apply to a State (Barnes *vs.* District of Columbia, 22 Ct. Cl., 366, 394); and see Wisc. R. R. *vs.* United States, 164 U. S., 190, where the doctrine of the Barnes case was affirmed.

The money in the case at bar has been unlawfully obtained from the State by mistake of all the parties. Can the United States, which has by legislative enactment (Rev. Stat., sec. 3210) compelled its agent—the collector—to pay it into

its treasury, say that it holds it *ex æquo et bono* to its *own* use, and not to the use of the State of South Carolina? If so, then the cases above cited must be considered bad law.

No appeal to the Internal Revenue Commissioner necessary—this is not a "revenue case."

If it be said that the money claimed here, having found its way into the Treasury of the United States, can only be recovered by complying with the provisions of sections 3226, 3227, and 3228 Rev. Stat., which provide for an appeal to the Commissioner of Internal Revenue, etc., the answer is, as we have already shown, that the internal-revenue act, of which these sections are but a part, does not apply to a State, and a consideration of these sections will confirm that view. The appeal, these sections declare, must be made "according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof."

The Secretary of the Treasury, in pursuance of this provision, has prescribed certain "regulations" or instructions to be complied with in presenting such an appeal. These regulations have the force of law (Maddox case, 20 Ct. Cl., 193, 198). They are in evidence, being printed on the blank "Form 46" (Exhibit C. H. F. No. 7), upon which these appeals are directed to be made. The most casual reading of them shows that the Secretary of the Treasury never himself contemplated that these "remedial statutes," as he correctly calls them, applied to a State. It is impossible for the State to comply with his "regulations." Thus the appellant is required to state that on such and such a day "he was engaged in the business of ——," etc. But the State was never engaged in the business of a wholesale or retail dealer in liquors within the meaning of the revenue laws.

Again, "that on the — day of —— he was *assessed* an internal-revenue tax of —— dollars, which amount *he* after-

wards, on the — day of ——, A. D. —, *paid* to —— ——, Esq., collector of internal revenue," etc. But the State has never been assessed and never *paid* such a tax.

And the appellant or his agent is required to swear to these statements.

In other words, the Secretary has made "regulations" for the refund of taxes *paid by the appellant himself*, while in the case at bar the State never *paid* nor authorized to be paid the money which it seeks to recover; nor, as we have seen, has the State ever been assessed this tax, and yet the "regulations" provide that "a claim for refunding should be made in the name *of the party assessed*," and section 3227 itself declares that "No suit or proceeding for the recovery of any internal tax alleged to have been erroneously or illegally *assessed* or *collected* shall be maintained until appeal," etc. Assessed against whom? Collected from whom? Why, the *person* who is to make the appeal. But no tax was ever collected from the State, though money of the State was without authority of law paid by the State's agent for a tax illegally charged against *him*—not against the State. The very *sine qua non* of the appeal is that it must be made *by the person against whom the tax was assessed and from whom it was collected.* Congress, of course, never intended the internal-revenue laws to apply to a State, and therefore provided a remedy only for those *persons* who might at some time complain of a tax "erroneously or illegally" assessed against or collected from them. The Secretary of the Treasury evidently had the same view of the statute when he prescribed these instructions or regulations. Can the State then be told that its remedy is to be found in these provisions and that they exclude it from a remedy which it might otherwise have had?

To appeal to the Commissioner would be a surrender by the State of the very point in controversy.

If the State should appeal to the Commissioner of Internal Revenue that appeal would be a *surrender* of her contention that she is not within the provisions of the internal-revenue law and never was assessed and never paid any tax, but that the dispensers were illegally assessed and paid this tax, though with the State's money, *and without the authority of the State so to do.* In other words, in order to get before the Commissioner, the State *must yield in advance the very contention upon which she bases her claim for relief.* This was made clear by the Supreme Court in Fassett's case, 142 U. S., 479, where Mr. Justice Blatchford, delivering the opinion of the court, said (p. 487):

"Under the administrative act, the libelant, in order to have the benefit of the proceedings thereunder, *must concede* that the vessel is imported merchandise, which is *the very question put in contention* under the libel."

And in De Lima *vs.* Bidwell, 182 U. S., 1 (one of the Insular cases), at page 178, in which the contention was whether the goods upon which an import tax had been assessed were *imported* or not—*i. e.*, whether they were taxable or not—the same reasoning was adopted by the court in answering the contention of the Government that the plaintiff should have appealed to the board of general appraisers under the customs administrative act, since by doing so he would have been compelled in his application to have *surrendered* the question that the goods were not imported. Mr. Justice Brown, in delivering the opinion of the court, quoted the above language of Mr. Justice Blatchford in the Fassett case as supporting the plaintiff's contention. Similarly, in the case at bar, the State does not admit that she is in any manner subject to any of the provisions of the revenue statutes. Her claim is based upon the Constitution, not upon the revenue

law. She claims the right, conceded to her, in common with her sister States, by the Federal Government, to come into the Court of Claims and sue for money had and received by the United States to her use, and she denies that there is any Federal statute which deprives her of that right and compels her to seek a remedy before a Government official who has power only to refund to the person who paid the tax within two years of the accruing of the cause of action, and, as we have seen, the State of South Carolina has never paid the collector any tax. What was paid, it is true, was the money of the State, but it was paid by persons having no authority of law to pay it, and was received by the collector of internal revenue with notice of that fact, and therefore its payment was not binding on the State.

The Dooley and De Lima Cases.

But conceding for the moment that a State is to be regarded as being within the purview of the revenue laws so far as appealing to the revenue office, we have yet to consider the effect of the decisions of the Supreme Court in two of the insular cases, decided May 27, 1901, Dooley *vs.* United States and De Lima *vs.* Bidwell, 182 U. S., 1. These cases, we submit, have finally settled the question and established the jurisdiction of the Court of Claims to entertain revenue cases. We have shown that this is not a revenue case, but merely an ordinary equitable claim for the recovery of money had and received. We therefore do not need the authority of the Dooley and De Lima cases to sustain the jurisdiction of the court; but should it be considered that the State was *assessed and paid* this tax, and therefore that the claim is within the category of "a revenue case," then we cite these insular cases to support the jurisdiction.

Special attention is invited to the first of these cases—Dooley *vs.* United States. All the authorities are there reviewed, and the doctrine of Nichols *vs.* United States, 7

Wall., 122, considerably modified if not overruled. In the Nichols case it was broadly stated that "cases arising under the revenue laws of the United States are not within the jurisdiction of the Court of Claims." But the Supreme Court in the Dooley case said: "The broad statement in the Nichols case that revenue cases are not within the cognizance of the Court of Claims, *if* still true" (note the force of the *if*), "must be accepted with material qualifications;" and, calling attention to its decision in De Lima *vs.* Bidwell, just previously decided, it said:

"In the Nichols case it was held that as there was a remedy by action against the collector expressly provided by statute that remedy was exclusive. In De Lima against Bidwell we held that, although no other remedy was given expressly by statute than that provided by the customs administrative act, there was still a common-law remedy against the collector for duties on goods not imported at all; *but it does not therefore follow that this remedy is exclusive, and that the importer may not avail himself of his right of action in the Court of Claims.*"

The Dooley and De Lima cases constitute a complete answer to the contention that sections 3226, 3227, and 3228 (the material parts of which are printed below for the convenience of the court*) apply to the case at bar, and that

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* SEC. 3226. No suit shall be maintained in any court for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until appeal shall have been duly made to the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, and a decision of the Commissioner has been had therein: *Provided*, That if such decision is delayed more than six months from the date of such appeal, then the said suit may be brought, without first having a decision of the Commis-

the remedy is by appeal to the Commissioner, and, if he rejects the appeal, by suit against the collector.

But the answer is found in principle as well as in authority, for if it be true that the revenue laws apply only to persons and not to a sovereign State, then these three sections, being a part of those laws, cannot, of course, be extended to include a State. Previous decisions, therefore, of the Supreme Court which have held that an appeal to the Commissioner of Internal Revenue is a precedent condition to the maintenance of a suit by a tax-payer *against the collector* (and we are suing here the United States and not the collector, nor are we suing as a *tax-payer*), even if they have not been overruled by the Dooley and De Lima cases, are to be largely differentiated from the case at bar.

The Nichols case, even if not overruled, is to be largely differentiated from the case at bar.

The Nichols case was a suit in which a *tax-payer*, namely, a *person*, was seeking relief in a customs case, but the State, we have seen, is not a tax-payer and is not a person; and

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sioner at any time within the period limited in the next section.

SEC. 3227. No suit or proceeding for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, shall be maintained in any court unless the same is brought within two years next after the cause of action accrued:

* * * * * * *

SEC. 3228. All claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, must be presented to the Commissioner of Internal Revenue within two years next after the cause of action accrued: * * *

we have seen also that no case can be found which holds a State to be within the purview of the revenue laws.

Thus, in the Nichols case we find this language used by the Supreme Court in reference to those sections of the Revised Statutes providing for an appeal to the Commissioner of Internal Revenue:

"These laws [*i. e.*, sections] constitute a system which Congress had provided for the benefit of those *persons* who complain of illegal assessment of taxes and illegal exaction of duties."

And again in the same case:

"While the Government is desirous to secure the *citizen* a mode of redress against erroneous assessments or collections it says to *him*," etc.

And again:

"Can it be supposed that Congress * * * intended to give the *tax-payer* and importer a further and different remedy?"

And the Court of Claims in Boughton's case, 12th Ct. Cl., 330, referring to so much of the language of the Supreme Court in the Nichols case as broadly declared that "cases arising under the revenue laws are not within the jurisdiction of the Court of Claims," has said:

"Broad and decisive as is this language it must be considered and construed with reference to the issues raised and the points involved in that case, which of course did not present *all* the questions of jurisdiction which may arise *in a great variety of forms* in numerous cases of entirely different character under the revenue laws."

In the Boughton case the money of the claimant in the hands of the collector had been appropriated to the payment of an internal-revenue tax without the claimant's consent, just as the money of the State of South Carolina in the hands of the collector has been appropriated to the

payment of an internal-revenue tax without the consent of the State. In the Boughton case jurisdiction was taken, *though no appeal had been made to the Commissioner of Internal Revenue.* Indeed, the Boughton case does not present as strong a state of facts as the case at bar, for there the claimant *himself* had placed the money in the hands of the collector, while here the money was obtained from the State's treasury unlawfully and without the authority, express or implied, of the State.

Nor can the unauthorized acts of the State's officials nor of the officials of the United States, the one in paying and the other in receiving the State's money, bind the State so as to place her in the attitude of a tax-payer and confine her to the tax-payer's remedy for relief—a remedy which shortens the statute of limitations to two years and places other obstacles to recovery not found in the general provisions of the law otherwise applicable.

Indeed, in this connection it may be remarked that, in sustaining the jurisdiction of the Court of Claims in the two Insular cases above cited, it was not necessary for the Supreme Court to change or modify any of its rulings in the Nichols case, for the reason that the suits brought in the Insular cases were not regarded by the court as customs cases—*i. e.*, revenue cases. The court having held that the claimants were neither exporters nor importers within the meaning of the revenue laws, and therefore not required to avail themselves of the remedies provided for cases arising under those laws, by that holding differentiated at once the cases before it from the Nichols case, which was clearly a revenue case. So, too, it must be similarly held that the case at bar is not a revenue case, since the State is not, and cannot be made, a tax-payer to the Federal Government.

The State not bound by the unauthorized Act of its agent.

That a State is not bound by the act of its agent in paying over its money to a third party when there is no law authorizing such payment has been well decided in the case of Wisconsin Central R. R. *vs.* United States, 164 U. S., 190, affirming the decision of this court in 27 Ct. Cl., 440. In that case it was said by Chief Justice Fuller, in delivering the opinion of the court:

"As a general rule, and on grounds of public policy, the Government cannot be bound by the actions of its officers who must be held to the performance of their duties within the strict limits of their legal authority, where, by misconstruction of the law under which they have assumed to act, unauthorized payments are made (Whiteside *vs.* U. S., 93 U. S., 247; Hawkins *vs.* U. S., 96 U. S., 689, and cases before cited). The question is not presented as between the Government and its officers, or between the officer and the recipient of such payments, but as between the Government and the recipient, and is then a question whether the latter can be allowed to retain the fruits of action not authorized by law, resulting from an erroneous conclusion by the agent of this Government as to the legal effect of the particular statutory law under or in reference to which he is proceeding. * * * Reference is made to Barnes *vs.* District of Columbia, 22 Ct. Cl., 366, 394, wherein it was ruled, Richardson, Ch. J., delivering the opinion, that 'the doctrine that money paid can be recovered back when paid in mistake of fact and not of law does not have so general application to public officers using the funds of the people as to individuals dealing with their own money when nobody but themselves suffer from their own ignorance, carelessness or indiscretion, because in the former case the elements of agency and the authority and duty of officers and their obligations to the public of which all persons dealing with them are bound to take notice are always involved.' We concur in these views and are of opinion that there is nothing in this record to take the case out of the scope of the principle that parties receiving money illegally paid by a public officer are liable *ex æquo et bono* to refund them."

Now, if a Government agent cannot bind the United States by his payment of money to a third party by mistake of law, can any sound reason be given why the same doctrine does not apply with equal force when the agent is an agent of one of the sovereign States of the Union, and the recipient is an agent of the United States, neither of whom has any authority of law from either of their principals to pay or receive this money.

Money paid under mistake of law may be recovered in this court even when a private party is the claimant, and, a fortiori, when a State, which can act only by its agents, is the claimant.

The money paid in the case at bar was paid under a mistake of law. A clear mistake of law is such a mistake as the Court of Claims, in the exercise of its *equitable* jurisdiction under the Tucker act, may correct.

In Snell *vs.* Insurance Company, 98 U. S., 85, 90, the Supreme Court, by Mr. Justice Harlan, delivering the opinion, quotes with approval the following language of Mr. Justice Story, in his Equity Jurisprudence, to show that equity will in a clear case relieve against even a mistake of law:

"We trust the principle that cases may and do occur where courts of equity feel compelled to grant relief upon the mere ground of the misapprehension of a clear rule of law, *which has so long maintained its standing among the fundamental rules of equity jurisprudence*, is yet destined to afford the basis of many wise and just decrees without infringing upon the general rule that mistake of law is presumptively no sufficient ground of equitable interference."

And in the same case the opinion of Chief Justice Marshall in Hunt *vs.* Rousmaniere's Adm'r, 8th Wheat., 174, was quoted, wherein he said that he had "found no case in the books in which it has been decided that a plain and acknowledged mistake of law was beyond the reach of equity."

The case, then, is simply this: That the State officials, deeming the dispensers liable to be taxed as liquor dealers under the revenue law, have by an honest mistake as to the law conceived it to be the duty of the State to pay the tax, and have, therefore, without warrant of law, drawn from her treasury the money to pay it. It is not, however, a case in which the United States can say it is not concerned where the money came from to pay this tax if the dispensers were taxable. *The Government's agent demanded and received it with notice of its source.* It was paid to him by a warrant upon the State treasurer stating on its face the purpose for which it was paid. He was therefore charged with knowledge that there was no law authorizing that to be done. Were the money now in his hands it could undoubtedly be recovered, but he has been compelled by his principal to pay it into the treasury, and equitably we have the right to follow it there. The case would seem to be even much stronger than that of The United States *vs.* Bank, 96 U. S., 30, heretofore cited, where it will be remembered money was received by a Government agent with knowledge of the fact that it was money of a third party, and though he paid it into the Treasury (not by the command of his principal—the Secretary of the Treasury—as the revenue collector did in the case at bar, but to cover up his own shortage), it was held that in good conscience the Government was liable to refund it.

The Dispensary Law is constitutional and is a legitimate exercise by the State of its Police power.

Immediately upon the establishment of the dispensary system it was attacked right and left by its enemies as unconstitutional. Zealous but mistaken churchmen and a deeply interested saloon element joined hands, the holy with the unholy, to defeat it. It was argued that while the legislature might exercise its police power to prohibit *entirely*

the sale of liquor within the State, yet that was very different from prohibiting its sale by private parties and then permitting its sale by certain specified State officials; that the effect was not only to create a monopoly by the State in the liquor traffic, but also to create an unjust discrimination in favor of a class of citizens. But the supreme court of the State in State *ex rel.* George *vs.* Aiken, 42 South Carolina, 222, in a well-considered opinion, elaborately considering the law and reviewing the authorities, held—I quote from the syllabus:

"1. The State, under its police power, can itself assume entire control and management of those subjects, such as liquor, that are dangerous to the peace, good order, health, morals and welfare of the people, even when *trade* is one of the incidents of such entire control and management on the part of the State.

"2. The dispensary act of 1893 providing for the sale of liquor by the State alone, carefully regulating such sales, and excluding all other purchases and sales within the limits of the State, is a police measure, and a valid exercise of the legislative power even though there may be a possible revenue, and the restrictions imposed might as well have been thrown around the liquor traffic in the hands of private persons."

In Crowley *vs.* Christensen, 137 U. S., 90, it was also said:

"By the general concurrence of every civilized and Christian community, there are few sources of crime and misery to society equal to the dram shop, where intoxicating liquors in small quantities, *to be drunk at the time* are sold indiscriminately to all parties applying. The statistics of every State show a greater amount of crime and misery attributable to the use of ardent spirits obtained at these retail liquor saloons than to any other source. * * * The police power of the State is fully competent to regulate the business, to mitigate its evils, or to suppress it entirely. There is no inherent right in a citizen to thus sell intoxicating liquors by retail. It is not a privilege of a citizen of a State, or of a citizen of the United States. As it is a business attended with danger to the community, it may, as already

said, be entirely prohibited, or permitted under such conditions as will limit to the utmost its evils. *The manner and extent of regulation rests in the discretion of the governing authority.* * * * *It is a matter of legislative will only.*"

Subsequently the question of the constitutionality of the dispensary law came directly before the Supreme Court of the United States in Vance *vs.* Vandercook, 170 U. S., 438. It was attacked upon the same exploded theory that the State could not monopolize to itself the trade in liquor; but the Supreme Court held that the *manner of regulating the traffic* was solely for the legislature, and that the dispensary law violated no provisions of the Federal Constitution.

The ground upon which this Case was decided by the Court of Claims and the answer thereto.

In the opinion delivered by Chief Justice Nott, of the Court of Claims, when deciding this case, it is said:

"The court does not question the power of the State to carry on this business, and does not doubt that the proceeds of the business lessen the taxes of the tax-payers. *All that it* DECIDES is that the business of the dispensaries was intrinsically *business* and not *government;* and being business was subject to the same national tax which is borne by all *other persons* engaged in the same business" (Rec., 23).

It will be seen from the above that the court decides two distinct points:

1st. That the dispensary law is not the exercise by the State of its *police power*, but the carrying on of a business,

2d. That the State is a "person" within the meaning of the revenue law and is subject to pay the same national tax, which is borne by all "OTHER PERSONS" engaged in the same business.

Elsewhere in its opinion the following language is used:

"The National Government, in effect, says to the State, 'Exercise your police power as you will, but pay to the National Government *a tax which is authorized by the Constitution and imposed by the statute.*'"

The issue then is squarely made.

Counsel for the claimant says the State is not a "person" within the meaning of sections 3232 and 3244 of the Revised Statutes, which imposes a special tax upon "every *person* who sells or offers for sale," &c. On the other hand, the Court of Claims decides that the State is "a person" within the meaning of those words of the statute.

Counsel for the claimant says the dispensary law is an exercise by the State of its police power, and therefore its instrumentalities (the dispensers) for carrying that law into effect cannot be taxed by the "National [Federal] Government."

The Court of Claims denies this contention and decides that the tax is "authorized by the Constitution and imposed by the statute," and the State may exercise its police power "as it will," but must "pay the tax."

Elsewhere the court says, "The National Government does not interfere with the exercise of the police power [of the State]; but the National Government cannot be expected *to aid it*"—*i. e.*, not to tax it. In other words, the syllogism, curious as it may seem, amounts to this:

Not to tax the police power of the State is to aid it.

The Federal Government will not *aid* the police power of the State.

Therefore the Federal Government taxes it.

We have, then, the proposition of constitutional law as enunciated by the Court of Claims squarely presented in the following terms:

1. That the dispensary law of the State of South Carolina is not an exercise by the State of its police power, but the

attempt of the State to carry on a *business* or commercial enterprise.

2. That even if it be an exercise of its police power, it is, nevertheless, subject to taxation under the revenue laws of the United States, for, says the court, "exercise your police power as you will but pay to the national Government a tax which is authorized by the Constitution and imposed by the statute."

These conclusions of law thus avowed are combatted in this case. The findings of fact are of course admitted. The difficulty, however, is that the Court of Claims does not reach its conclusions of law from any of its twelve findings of fact as set forth in the record, beginning at page 9. Its conclusions of law are derived from and based on a series of declarations of *a supposed state of facts*, which are in no single instance supported by the record of facts as found by the court in its "finding of facts" set forth in the record, and which are the only *facts* which this court or the Court of Claims can look to whereon to base its conclusions of law. These *extra* judicial findings are contained in the following excerpt from the court's opinion (Rec. 19); the italics are those of the court, not mine:

'The commercial character of the State's undertaking is stamped unmistakably upon the system. The statute establishing it authorized a *profit* of 50 per cent.,* and con-

* It will be observed that the learned judge is referring to the dispensary act of 1892, which is not involved in this case, since owing to the statute of limitations the special taxes collected by the United States from the dispensers for the years 1893 and 1894 are barred by the statute of limitations. The act of 1892 was amended December 22, 1893, and as shown by the supreme court of South Carolina in the Aiken case, 42 So. Ca., 222, 230, the revenue feature of the act of 1892 was entirely changed and made dependent upon rules to be adopted by the board of control created by the

templated large profits, directing the manner in which they should be utilized and distributed. As a matter of fact, the system has been a great commercial success, and has yielded large profits. (NOTE.—Nothing of this "great commercial success" appears in the finding of facts.) In 1898, however, the system as a business was confronted by judicial interference in the form of an injunction which enjoined the State officers from interfering with the delivery and sale of liquor brought into the State from beyond its borders. The governor of South Carolina regarded the injunction as a blow possibly, if not probably, fatal to the system itself. In his annual message he brought the subject before the legislature, and said:

"'Judge Simonton has destroyed, along with the dispensary, the license system *when run for profit*. What, then, is left to do? We must either enact prohibition or continue the dispensary system *without the profit feature*. Many, a majority, I believe, do not think prohibition is practicable; and many have approved the dispensary system *because of the profit feature*. We can certainly get rid of the "original package" dealer and their demoralizing traffic by continuing the dispensary, *shorn of all profits and administered only as a police regulation to control and reduce the liquor evil*. The Federal judge will have neither occasion nor excuse for his ever-ready injunctions, *if that system shall be inaugurated*,

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act, and, said the court (p. 241), "It is within the power of the board of control to eliminate the profit feature altogether." So that the Court of Claims was really not construing the act under which we claim that the State was exercising its police power, but a *repealed statute!* The opinion of the Court speaks of an "authorized" profit of fifty per cent. This is misleading; the act referred to limits the profit at which the State Commissioner shall sell to *not more* than fifty per cent., but his action is subject to the approval of the Board of Control. The figures, $545,248.12, alluded to by the Court (Rec., 20), are taken from the VIII Finding of Fact. Only half of this went to the State, whose profit, as shown in said Finding, so far from being fifty per cent., was less than ten per cent. If it be that the Court of Claims may go outside of the Findings of Fact to cite from and base an argument on a message of the Governor of the State, then I ask leave to cite from another message of the Governor of the State, which shows conclusively the police character of the dispensary law and the manner of its enforcement by the State Executive (see Appendix No. 2, *post*).

unless he shall again reverse his own previous decision. This, then, appears to me to be the best and almost the only thing left for us to do. *We might try this policy for a year*, and next winter, after Congress shall have acted or failed to act, and after the Supreme Court at Washington shall have decided what is to become of the State's power to control liquor under the Wilson bill of 1890, we shall be in a position to take final action.'

"And in his annual message of the following year, he said:

"'The dispensaries have been forced to fight free whiskey on terms of absolute equality; yet, strange to say, they have fought it successfully; *for while the profits were reduced by this lawless competition, there was still enough business to make the dispensary self-supporting and leave a small margin of profit.*'

"The legislature apparently acquiesced in the suggestion of the executive in 1898 to 'try this policy for a year,' and allowed the system to continue; and it continued to do business and to make a profit upon its business, as shown by the above quotation from the message of 1899, notwithstanding that imported liquor was brought into the State and sold in the original packages. But before the year of probation expired the competition which the governor of South Carolina deplored was largely, if not altogether, removed by the decision of the Supreme Court in *Vance v. Vandercook* (170 U. S. R., 438), wherein it was held that the purchaser within a State has the constitutional right to receive packages sent from another State for his own use, notwithstanding that there be State laws to the contrary, but that he can not sell in the original packages in defiance of State law. There was thus restored to the State substantially its monopoly of the sale of intoxicating liquors, and the business yielded a net profit in the year 1901 of $545,248.12."

Nothing of this sort appears in any of the findings of fact, and this court cannot of course assume them to be correct.

United States *vs.* Clark, 96 U. S., 37.

Mohun *vs.* United States, 14 Wall., 109.

But even did we assume these statements of fact set forth in the court's opinion to be a part of the findings of fact,

they would constitute no justification for the conclusions of law reached by the Court of Claims, because the question whether or not a statute is an exercise by the State of its police power is to be tested by the terms of the statute itself and not by what the State officials declare in regard to it; and, moreover, as we shall see, the fact that the State derives a profit from the administration of its police law does not make it any the less a police law.

The conclusions of law reached by the Court of Claims can only be correct by assuming that for nearly a half century the chief law advisers of the United States Government have been advising it wrongly. Nay, more than this, I respectfully submit that to sustain the Court of Claims in its present ruling the Supreme Court of the United States must declare its own rulings upon the same question for nearly a century past unsound. And it would seem that something of this sort was in the minds of the learned judges of the Court of Claims in considering this case, for, says the opinion:

"The court has not overlooked the fact that in one instance a State was carrying on an ordinary commercial business, owning and operating a railroad, and that *one* court of the United States held that it was not intended that a State should be included in the requirements of this statute by the term 'corporation' (*State of Georgia v. Atkins*, collector, 35 Ga. R., 315), and that the decision has been referred to *in an indirect way* by one of the judges of the Supreme Court (*United States v. Railroad Company*, 17 Wall. R., 322, 328). But this court is constrained to say that *the magnitude of the present question was not presented to the court in Georgia and was not considered, and that the question involved there was not involved in the case in the Supreme Court*, where all that was held was that a municipal corporation is a portion of the sovereign power of the State, and is not subject to taxation by Congress upon its municipal revenues."

With all respect, I have yet to learn that the "magnitude" of a question can change the law. Furthermore, I respectfully submit, the question involved in the Georgia case was

precisely the same question in principle involved in the Balt. & Ohio case.

The so-called "Commercial" feature of the Dispensary Law.

I have already discussed in this brief the questions of law which have been put in issue by the decision of the Court of Claims, and of course will not go over the subject again. There are, however, a few propositions, not there dealt with, save merely by way of allusion, that may perhaps require notice, and the most important of them is the proposition made by the Court of Claims, that where a State carries on a commercial business for "profit" that business is liable to taxation by the Federal Government.

It is submitted that that question cannot arise in this case until it is first determined that the dispensary system of the State of South Carolina is a commercial enterprise on the part of the State, and not an exercise by it of its police power, but assuming for the moment that it is the former, it is by no means the law that when a State engages in an enterprise, which, if carried on by a private person, would be subject to taxation under the revenue laws of the Federal Government, the State itself is liable to the same taxation.

A sufficient answer to the proposition of the Court of Claims in this regard will be found in the decision in Georgia vs. Atkins just above cited. In that case it will be seen that the State of Georgia had purchased a railroad and was engaged in *running it* as a State enterprise, carrying passengers and freight *for hire* and profit. What was this but engaging in *business?* Yet when the internal-revenue officers attempted to tax the gross receipts of the railroad, under a general provision of the internal-revenue law extending to all railroads, it was held that the law had no application to the State railroad, and the tax was enjoined. This case was cited with approval in the Baltimore and Ohio R. R. case, and Mr.

Justice Bradley concurred in the judgment expressly upon the ground "that Congress did not intend by the internal-revenue laws to tax property belonging to States." In that case the city of Baltimore had entered upon the business enterprise of lending its money upon interest to the Baltimore and Ohio Railroad Company. What was that but engaging in the business of lending the State's money for profit, and a double profit at that—*i. e.*, the profit on the money loaned and the profit realized by securing the building of a railroad for the city of Baltimore? Yet the Supreme Court said the income so derived could not be taxed by the United States, because it was the property of a State. So, in the Detroit House of Correction case, 12 Op. Att'y Gen'l, 376, the State of Michigan had entered into the business of *manufacturing* and selling articles which if manufactured and sold by private parties would have been subject to taxation under the internal-revenue law. The same principle was applied in the case of "The Taxation of State Railroads and Manufacturers," 12 Op. Att'y Gen'l, 277, and the case of the Hartford National Bank, 12 *id.*, 402, and in cases reported in 13 *id.*, 67 and 439, all of which are cited and quoted from on page 6 of my principal brief. Five different Attorneys General of the United States have held in those cases—in all of which the various States concerned were engaged in some kind of *trade* or *manufacture*—that the internal-revenue law had no application to them, for two reasons:

1st. *That a State is not a person;* and

2d. *That neither a State nor its property can be taxed by the Federal Government.*

But a complete answer to the proposition, so far as it can arise in this case, is given by the supreme court of South Carolina in its opinion in the case of *Ex rel.* George *vs.* Aiken, 42 So. Ca., 222, where, when considering this very question,

i. e., whether the dispensary system was a commercial enterprise on the part of the State or a legitimate exercise by it of its police power, it answered the contention of counsel that section 41, article 1, of the State constitution forbade the State from engaging in and monopolizing the business of liquor selling. Said the court:

"If such was the object of the [dispensary] act and it was not intended as a police measure, it would be unconstitutional, even in the absence of sec. 41, art. 1. As we have said, *if the act is not a police measure, it is unconstitutional.* It is quite a different thing, however, *when trade is simply an incident to a police regulation.* Buying and selling on the part of the Federal, State, and municipal governments take place every day, and as long as the buying and selling are in pursuance of police regulations they are entirely free from legal objection. The Federal Government sells liquor and other articles that they have seized as contraband. Articles are purchased by the State to keep up the penitentiary and asylum and other public institutions and enterprises. We see it buying a farm to utilize the convict labor of the State, and selling the produce made on the farm. Municipal governments have the right to buy and dispose of property in administering their governmental affairs. The very distinction for which we contend is pointed out in the case of Maulden *v.* City Council, 33 S. C., 1. In that case the court showed that it was not wrong for the city to buy and sell for a public purpose, but that the act only became illegal when it was for *a private purpose.* We think the case was properly decided, and that the decision rested upon this distinction." (State *v.* Aiken, *supra*, 247.)

Salt Lake City vs. Hollister, 118 U. S., 256.

The Court of Claims in its opinion cites the above case and also the case of The Republic of Honduras *vs.* Soto, 112 N. Y. R., 110, with the remark that they "admonish us that such terms as 'person' and 'corporation' are broad enough in statutory construction to include the corporate title of a Government or municipality." In this the learned court

loses sight of the fact that neither the Republic of Honduras nor the Territory of Utah are *States* of the Federal Union. The Federal Constitution was not adopted with reference to the rights of any of the Republics of South America; and with respect to the Territory of Utah it need only be said that there is a great difference between that, or any other, Federal Territory and a State—the former is the creature of Congress; a State is not. Congress may enact any laws it pleases in respect of the taxation of the former. The Federal Constitution does not control it in that respect. The contrary is the case with a sovereign State of the Union. Salt Lake City, as a territorial municipality, was, at the time in question, wholly subject to the legislation of Congress. If Utah had then been a State of the Union, Salt Lake City would have had the same right of exemption from Federal taxation of her property as the city of Baltimore, in the State of Maryland. It will be remembered that in the Baltimore and Ohio Railroad case, *supra*, the Supreme Court held the latter city to be an aliquot part of the State, and therefore, as such, the income of bonds owned by it was exempt from taxation under the Federal internal-revenue laws. The court did not apply the same rule to Salt Lake City, for the plain reason that the latter was part of a Territory, and as such was not subject to the limitations of the Constitution upon questions of taxation.

"Triviality" (?) of the Tax Immaterial.

One or two other criticisms and I have done with this remarkable opinion. The court speaks of the tax (which amounts to about $3,000 a year and already exceeds $20,000 taken from the State's treasury) as being "*trivial*." Of course it is not the question of the *amount* of the tax, for with that neither the Court of Claims nor this court has anything to do. It is the *right* to tax at all which is the question before the court, for, as was said by Chief Justice

Marshall, the power to tax includes the power to destroy. If, therefore, the Federal Government can levy any tax at all against the dispensary system of South Carolina, whether directly or indirectly, it can tax that system out of existence, as it taxed the private State banks out of existence.

Loss of Revenue to the Government Immaterial.

So, too, the question whether the State could set up a distillery and distill its own liquors and dispose of them within and *without* the State free of taxation is a question not involved in this case, but, if it were, certainly the argument that if the Federal Government could not tax these liquors thus distilled by the State it would deprive that Government of a large revenue can have no place in any consideration of the *law* of the subject, any more than it had when this court was considering the validity of the income tax in Pollock *vs.* Trust Company, a decision which deprived the Government of an annual revenue exceeding, it has been estimated, fifty millions of dollars. Nor does the alleged fact that the tax is not really paid by the State but by the purchaser of the dispensary liquor seem to be at all relevant, since in the last analysis all taxes come out of the pocket of the citizen.

The Application for the Trade-Mark.

I would—merely by way of protest, however—call the attention of the court to the tenth finding of fact. This finding has no proper place in this case. It is entirely irrelevant. The application for a trade-mark was refused upon the express ground that the dispensary *was not engaged in, and could not, under the law of the State creating it, engage in the sale of liquor outside of the State.* Said the learned Commissioner (Seymour) in delivering his opinion in the case:

"The application for this trade-mark is made by the governor in the name of the State, and the State legislation

under which this action is taken is before me. Its significant title is 'An act to prohibit the manufacture and sale of intoxicating liquors as a beverage within this State, except as herein provided.'

"A critical analysis of the act shows it to be a stringent measure of State regulation, within the State, of a traffic considered open to abuse in private hands. The comprehensive language of the first section definitely restricts the traffic within the limits laid down in the act. The State commissioner purchases the liquors and furnishes them to the county dispensers, to be sold as the act prescribes: 'In all purchases or sales of intoxicating liquors made by said commissioner, as contemplated in this act, the commissioner shall cause a certificate to be attached to each and every package containing said liquors when the same is shipped to him from the place of purchase, or by him to the county dispensers, certified by his official signature and seal, which certificate shall state that the liquors contained in said package have been purchased by him for sale within the State of South Carolina, or to be shipped out of the State, under the laws of said State.' (Part of section 2.)

"The expression 'to be shipped out of the State' evidently refers to the traffic, elsewhere permitted in the act, to manufacturers located within the State, who may sell outside the State, provided the certificate of the State commissioner is obtained and affixed to every package.

"Section 18 appropriates the sum of fifty thousand dollars, if so much be necessary, for the purpose of purchasing and of supplying liquors to be distributed to county dispensers under the provisions of the act.

"Every one of its minute provisions may be given its full and appropriate meaning by construing the whole act as a measure for the suppression of the liquor traffic in South Carolina by private individuals, and to substitute therefor its complete control by the State through local public dispensers. It is only by strained constructions that any phrases in the act may be held to look to the establishment of an outside traffic of any kind, excepting in the purchase of the liquors to be dispensed. Nor is there anything in the general or special objects of the statute to show that the State intended to descend to the level of a trading corporation outside its own limits in and by the same public act whereby it prohibits both individuals and private corporations, and,

by necessary construction, other States themselves, if they should attempt to act as private corporations in this particular, from entering for the purpose of this traffic the domain of South Carolina. If it should be held that the State could enter the field of commerce in traffic in intoxicating liquors outside its own limits, it must at the same time be held that the State *has not done so* in or by the legislation before me.

"The State speaks by its constitution and public acts. Its law-making power, including within that term the power by which constitutions are made as well as laws, is *alone* the repository of the sovereign and governmental powers of the State. That power is *alone* competent to initiate and define the policy of the State. *Neither the governor nor the State board of control provided for in this act can by any acts of theirs, even in the name of the State, take the State into trade.*

"The provisions of the trade-mark law of 1881 are that owners of trade-marks used in commerce with foreign nations, or with Indian tribes, may obtain registration, but the application must be accompanied by a declaration to the effect that such party has at the time a right to the use of the trade-mark sought to be registered.

"It is considered that the State of South Carolina, notwithstanding the acts of its governor and State board of control, *has not authorized trade in liquors outside its own limits*, is not the owner of any trade-mark, has not at this time the right to the use of the trade-mark sought to be registered, and therefore the application is denied" (Pat. Off. Gaz., vol. 64, p. 1395).

The Opinion of the Supreme Court of South Carolina on the Dispensary Law as an Exercise of the State's Police Power.

As an answer—full and complete—to every proposition advanced by the Court of Claims in its opinion in this case, I desire to place before the court in the remaining pages of this brief the opinion of the supreme court of the State of South Carolina in the case of State *ex rel.* George *vs.* Aiken, 42 So. Ca., 222, or at least so much thereof as bears directly upon the questions before this court.

In that case the dispensary law of South Carolina was discussed in all its bearings and its constitutionality as an exercise by the State of its police power upheld by the court. The relator, George, who was operating a dispensary by State appointment and authority, under the act of the General Assembly, approved December 23, 1893, and known as the "Dispensary act," having been summoned to answer before the town council of Aiken for violation of an ordinance prohibiting the sale of vinous or malt liquors without a license, applied for a writ of prohibition, restraining the town council from interfering with him upon that charge on the ground that the ordinance was a nullity, and that the council, in seeking to enforce it, was attempting to exercise an unauthorized power. The respondent attempted to justify its proposed action by asserting the validity of the ordinance, and by the claim that the dispensary act was null and void as violative of the State constitution, and also as violative of the Constitution of the United States and of the laws regulating interstate commerce, but these latter grounds were not pressed on the argument in the Supreme Court. The court below held on the authority of McCullough *vs.* Brown, 41 S. C., 270, that the act of 1893 was violative of the State constitution and null and void, and ordered the writ of prohibition to issue, and it was this action of the court below which came under review by the supreme court of the State on appeal from the decision. As a matter of historical interest, it may be stated that the dispensary act of 1892 had been construed by Judge Simonton in the circuit court of the United States in the case of Cantini *vs.* Tillman, 54 Fed. Rep., 969, and the constitutionality of the act sustained as a valid exercise by the State of its police power. Subsequently, by an act of December 23, 1893, the Legislative Assembly amended the act in many particulars, and it was this latter act as amended which had been construed by the supreme court of the State in McCullough *vs.* Brown and held to be unconstitutional. So that when the Aiken case came before the court the impor-

tance of the question was heightened by the fact that the court was confronted by its former decision holding the act of 1893 to be violative of the State's constitution. In a most learned and well-considered opinion by Mr. Justice Gary, all the authorities were reviewed, and the conclusion arrived at that the decision in the McCullough case was wrong in principle, and it was accordingly overruled. I now reproduce here so much of the court's opinion as bears upon the question involved in the present case. The italics in the opinion are all my own. After showing that the dispensary act of 1892 did not in its title expressly purport to be a police measure, while such was the title of the act of 1893, and further that in the act of 1893 the revenue feature is dependent upon rules to be adopted by the State board of control, while in the act of 1892 express provision was made in the act itself as to the revenue, and declaring that, notwithstanding the amendment, the principles upon which the court in the former case had declared the act of 1892 unconstitutional would, if followed, make the amended act also unconstitutional, the court proceeded to reconsider the question of the constitutionality of the dispensary law with special reference to its so-called "profit" and "monopoly" features.. Said the court:

We think differences of opinion as to the constitutionality of this act arise from the attempt on the part of some to apply to it the law applicable to the ordinary commodities of life. The sale of an article may be lawful unless restrained by law, and yet it may be of such a nature as to endanger the peace, safety, health, and morals of a people. We do not suppose there is a more potent factor in keeping up the necessity for asylums, penitentiaries, and jails, and in producing pauperism and immorality throughout the entire country, than liquor, and yet it is argued that it is to be placed on the same footing with the breadstuffs and other ordinary commodities of life. Black Intox. Liq., § 31, says: "For an unregulated and unrestricted traffic in liquor, it is admitted, threatens the public safety by generating vice and crime, imperils the peace and order of the community

by the demoralization of its victims, and poisons the fountains of the public prosperity by its contributions of pauperism and squalor." The same author, in section 35, says: "Restraints upon the traffic in spirituous liquors are not like such as restrict the ordinary avocations of life which advance human happiness, or trade and commerce, that produce neither immorality, suffering, or want." Parker and Worthington, on Public Health and Safety, shows that the business of selling liquor is attended with danger to the community, and that a citizen has not the inherent right to follow such avocation.

We quote the following from State *v.* Turner, 18 S. C., 106, in which Mr. Justice McIver delivered the opinion of the court: "The power of the legislature to regulate the sale of spirituous liquors has been too long and too well settled to admit of question at this late day. Experience has demonstrated that the unrestrained traffic in spirituous liquors is dangerous to the peace and welfare of society, and, therefore, it has long been settled that the law-making power may throw such restraints around that traffic, as in the judgment of that department of the government may be necessary to secure the peace and welfare of society."

The court, in Crowley *v.* Christensen, 137 U. S., 90, says: "It is urged that as the liquors are used as a beverage and the injury following them, if taken in excess, is voluntarily inflicted, and is confined to the party offending, their sale should be without restriction, the contention being that what a man shall drink, equally with what he shall eat, is not properly matter for legislation. There is in this position an assumption of a fact which does not exist—that when the liquors are taken in excess, the injuries are confined to the parties offending. The injury, it is true, first falls upon him in his health, which the habit undermines; in his morals, which it weakens; and in the self-abasement which it creates. But as it leads to neglect of business, and waste of property, and general demoralization, it affects those who are immediately connected with and dependent upon him. By the general concurrence of opinion of every civilized and Christian community, there are few sources of crime and misery to society equal to the dram shop, where intoxicating liquors in small quantities, to be drunk at the time, are sold indiscriminately to all parties applying. The statistics of every State show a greater amount

of crime and misery attributable to the use of ardent spirits obtained at these retail liquor saloons than to any other source. * * * The *police power of the State is fully competent to regulate the business*, to mitigate its evils, or to suppress it entirely. There is no inherent right in a citizen to thus sell intoxicating liquors by retail. It is not a privilege of a citizen of the State or of a citizen of the United States. As it is a business attendant with danger to the community, it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils. *The manner and extent of regulation rest in the discretion of the governing authorities.* That authority may vest in such officers as it may deem proper the power of passing upon applications for permission to carry it on, and to issue licenses for that purpose. *It is a matter of legislative will only.*"

It is because liquor is not regarded as one of the ordinary commodities that the act of 1892 prohibiting its sale, was, as to that matter, construed to be constitutional. We cannot for a moment believe that the court would have declared an act constitutional that prohibited entirely the sale of corn, cotton, or other ordinary commodities. *It is fallacious to argue, in the light of this distinction, so thoroughly sustained by the authorities, that if the Government can take the exclusive control of the liquor traffic, it can do so as to any other avocations in life.* In Black Intox. Liq., § 24, the police power is thus defined: "It cannot be doubted, however, that the origin of this power must be sought in the very purpose and framework of organized society. It is fundamental and essential to government. It is a necessary and inherent attribute of sovereignty. It antedates all laws, and may be described as the assumption on which constitutions rest; for the State, whether we regard it as an association of individuals or as a moral organism, must have the right of self-protection, and the power to preserve its own existence in safety and prosperity, else it could neither fulfill the law of its being nor discharge its duties to the individual. And to this end it is necessarily invested with power to enact such measures as are adapted to secure its own authority and peace, and preserve its constituent members in safety, health, and morality. Theories of the State, according as they tend to enlarge or restrict the legitimate sphere of its functions and activities, will create theories as to the proper limitations of the police power. But its existence in a measure proportionate to the

rights and duties it is to guard, is implied in the recognition of the State as a factor in law and civilization. 'It is a power,' as has been well said, 'essential to self preservation, and exists necessarily in every organized community. It is, indeed, the law of nature, and is possessed by man in his individual capacity.' For these reasons, it appears that the nature and authority of the police power are best described by the maxim, '*Salus populi suprema lex*,' while the principle, '*Sic utere tuo ut alienum non lædas*,' furnishes in most cases a convenient rule for its application."

We find the following in Trageser *v.* Gray, 73 Md., 250: "We are unable to conclude that every one, citizen or alien, can acquire rights which can in any way control, impair, impede, limit, or diminish the police power of a State. Such power is original, inherent, and exclusive. *It has never been surrendered to the General Government, and never can be surrendered without imperiling the existence of civil society.*" Mr. Justice Field, in his dissenting opinion in Slaughter House cases, 16 Wall., 36, although he denied the application of the doctrine of police power to the cases then before the court, says: "If it really were a police regulation, it would undoubtedly be within the power of legislation." Chief Justice Waite, in Stone *v.* Mississippi, 101 U. S., 814, says: "No legislature can bargain away the public health or the public morals. The people themselves cannot do it, much less their servants. The supervision of both these subjects of governmental powers is continuing in its nature, and they are to be dealt with as the special exigencies of the Government may require. Government is organized with a view to their preservation, and cannot divest itself of the power to provide for them. *For this purpose the largest legislative discretion is allowed, and the discretion cannot be parted with any more than the power itself.*"

The police power being fundamental in its nature, inherent in and so essential to Government, that its very existence is dependent thereon, the exercise of such power is necessarily one of the chief functions of Government, *and primarily devolves upon the Government itself*, although it has been allowed in certain cases to *delegate* and "farm out" such power to corporations and individuals. The licensed saloon-keeper does not sell liquor by reason of an inalienable right inherent in citizenship, but because the Government *has delegated to him* the exercise of such rights under its

power of police. *It would be an anomaly in the law to hold that the principal could delegate to an agent a greater power than the principal himself could exercise;* yet that is contended in this case. The question admits of graver doubts as to the right of the Government to delegate the power than to *exercise it directly.*

There are expressions of Mr. Justice McGowan in the case of Town Council *v.* Pressley, 33 S. C., 56, tending to sustain this view. That case also shows that *the court cannot question the discretion exercised by the law-making body in adopting such measures as, in its judgment, seemed best under its power of police.* In that case he says: "Undoubtedly, as a rule, every man may cultivate his own land in his own way, but even in that case he may use his land in such manner as to amount to 'a nuisance,' indictable at common law. That, however, does not touch the question under the ordinance passed by virtue of the powers conferred upon corporate authorities by the legislature 'for preserving the health, peace, order, and good government of the town.' The ordinance, by its declared purpose, was a police regulation for preserving the health of Summerville, a small town in the pines, about twenty miles out of Charleston, which afforded a convenient summer resort for health. Assuming, for the present, that the town council had the power to pass the ordinance, no question can be made whether 'a nuisance' had been created, nor whether the restrictions complained of were necessary to accomplish the purpose in view. *It was their exclusive right to judge what was necessary and requisite to preserve the health of the town.* 1 Dill. Mun. Corp., § 144, and authorities in note." Again: "The State, through the law-making body, certainly possesses the police power, which, from its very nature, has no well-defined limits, but must be as extensive as the necessities which call for its exercise. Judge Dillon describes it thus: 'Every citizen holds his property subject to the proper exercise of this [police] power, either by the State legislature directly, or by public corporations to which the legislature may delegate it.'" Again: "If the legislature itself had passed the Summerville ordinance just as it stands, it could not, as we think, be doubted that it was a constitutional exercise of the police power. It is said, however, that it was a mistake to suppose that the cultivation of the soil in certain crops was dangerous to health, and, therefore, the restriction was not a proper

one. We suppose that the cultivation inhibited must have been considered as dangerous to health in the locality of Summerville. But, be that as it may, it was a question for the law-making body. 'The judiciary can only arrest the execution of a statute when it conflicts with the Constitution. *It cannot run a race of opinion upon points of right, reason, and expediency with the law-making power.*' Cooley Const. Lim., p. 201. Assuming that the legislature had the power to pass the Summerville ordinance, there can be no doubt that it had the right to delegate that power to the municipal authorities of Summerville, as the governmental agent of the State within the corporate limits of the town. 'The preservation of the public health and safety is often made a matter of municipal duty, and it is competent for the legislature to delegate to municipalities the power to regulate, restrain, and even suppress particular branches of business, if deemed necessary for the public good.' See 1 Dill. Mun. Corp. (3d ed.), § 144, and Harrison *v.* Mayor &c. of Baltimore, 1 Gill., 264.'

It will be seen from that case that the power of police is so great that under its exercise a person may be restricted as to the area of land he shall be allowed to cultivate under certain circumstances; yet it is contended that the State cannot take control and management herself of the liquor traffic. In Mugler *v.* Kansas, 123 U. S., 660, the court says: "But by whom or by what authority is it to be determined whether the manufacture of particular articles of drink, either for general use or for the personal use of the maker, will injuriously affect the public? Power to determine such questions so as to bind all must exist somewhere, else society will be at the mercy of the few who, regarding only their own appetites or passions, may be willing to imperil the peace and security of the many, provided only they are permitted to do as they please. *Under our system, that power is lodged with the legislative branch of the Government. It belongs to that department to exert what is known as the 'police powers' of the State, and to determine primarily what measures are appropriate or needful for the protection of public morals, the public health, or the public safety.* If, therefore, a State deems the absolute prohibition of the manufacture and sale within her limits of intoxicating liquors for other than medical, scientific, and manufacturing purposes, to be necessary to the peace and security of society, the courts cannot, without

usurping legislative functions, overrule the will of the people as thus expressed by their chosen representatives. *They have nothing to do with the mere policy of legislation.*"

In the case of State *v.* County of Wapelo, 13 Iowa, 419, the court says: "Will it be said that the State can confer a police power which she herself does not possess? We do not believe that such is the theory or nature of the legislative department of our State government. We know that she may confer powers upon the judicial and executive departments, and authorize them to do acts which she herself could not do, for the reason that these are distinct and co-ordinate branches of the Government, the functions of which cannot be performed by the General Assembly, but which, nevertheless, are to a certain extent under legislative control and regulation. When we say, therefore, that the legislature cannot bestow upon her subdivisions rights and powers reserved by the Constitution from her, we mean, of course, a police power. These subdivisions receive their corporate existence and all their corporate duties and powers from the legislature. They are intended as instruments of government in the hands of the legislature to aid it in the administration of its public regulations within certain prescribed localities. *This being the case, it is competent for the legislature at any time to suspend these agencies and* RECLAIM *the powers which she had thus conferred,* AND EXECUTE THEM DIRECTLY HERSELF." Cooley Const. Lim., p. 119, says: "The constituent, when he has delegated an authority without an interest, may do the act himself which he has authorized another to do, and especially when that constituent is the legislature, and is not prohibited by the constitution from exercising such authority. Indeed, the whole authority might be revoked, *and the legislature resume the burden of the business to itself, if, in its wisdom, it should determine that the common welfare required it.*"

We come now to an examination of the act of 1893 [the dispensary law] as to its main features. It has been shown in the case of Mugler *v.* Kansas, 123 U. S., 623, that what are known as "police powers" of the government are to be determined primarily by the legislative department. *The intention of the legislature is to be gathered from the words of the act.* The title of the act is, "An act to declare the law in reference to and further regulate the use, sale, consumption, transportation, and disposition of alcoholic liquids or liquors within the State of South Carolina, and to police the same."

The act provides that "all such liquors, except when bought from a State officer authorized to sell the same or in possession of one, are declared to be contraband, and against the morals, good health, and safety of the State, and may be seized whenever found," etc. The governor, attorney general, and comptroller general shall *ex officio* constitute a State board of control to carry out the provisions of this act. The act provides for the appointment of a commissioner, who shall purchase all liquors for lawful sale under such rules and regulations as may be made by the State board of control, and furnish the same to such persons as may be designated as dispensers thereof. All liquors shall be tested by the chemist, and declared to be pure, before sale to the county dispensers. The State board of control shall appoint a county board of control, composed of three persons, who shall appoint certain officers known as "county dispensers." The dispensers can only sell by the package, which cannot be broken nor the liquor drunk on the premises where sold.

The act shows that the legislature had in view the protection of the "morals, good health, and safety of the State" in dealing with this question. Many safeguards are thrown around the sale of the liquor. The commissioner is to be an abstainer from intoxicants. The liquor is to be tested by the chemist and declared to be pure. The liquor is to be sold only by the package, which cannot be opened nor drunk where sold. The sales can only be made in daytime. Persons cannot be appointed on the county board of control who are addicted to the use of intoxicating liquors. No person can be appointed a county dispenser who has ever been adjudged guilty of violating the law relating to intoxicating liquors, nor who is keeper of a restaurant or a place of public amusement, nor who is addicted to the use of intoxicating liquors as a beverage. The county dispenser shall execute a bond in the sum of $3,000, upon which suit for damages may be brought for a violation of the provisions of the act by a wife, child, parent, guardian, employer, or other person. A majority of the voters in a township may prevent the establishment of a dispensary. The county dispenser shall take an oath therein prescribed. A printed or written request must be presented for permission to purchase. The sale shall not be made to a minor, a person intoxicated, a person in the habit of drinking to excess, nor to a person unless

known to the dispenser. It prevents the establishment of club-rooms where liquors are used. One of the beneficial results of the law is brought about by selling only for cash.*

It has been argued that there is no necessity for this regulation by the State; that the same results could be accomplished by allowing private individuals to carry on the traffic, and for this reason the act is null and void. The *necessity* was a question *exclusively* for the legislative department, as shown by the foregoing authorities, particularly Town Council *v.* Pressley, 33 S. C., 56. The judiciary "cannot run a race of opinions upon points of right, reason, and expediency with the law-making powers." The State has the right, through its own officers—in fact, it is its primary duty—to enforce its police regulations, which right inheres in government itself, and is paramount to any right inherent in citizenship. But, referring to the foregoing objection, as matter of fact, it would not be as efficiently enforced by private individuals, *because there would be the constant temptation to make as large profits as possible.* Chief Justice McIver, in McCullough *v.* Brown (p. 241), says: "By its profit feature it holds out an inducement to every tax-payer to encourage as large sales as possible, and thereby lessen the burden of taxation to the extent of the profits realized." Now, if the indirect profits in the case mentioned are sufficient to induce the tax-payer to encourage large sales in which he would at most have only a very small interest, how great would then be the inducement to encourage large sales when the seller would get all the profits? *The dispensary act itself is an outgrowth of a dissatisfaction on the part of the people with the manner in which the police power, when* DELEGATED, *was abused.* The law was enacted in self-defense, and vindicates the wisdom of our forefathers in allowing wide legislative discretion in the exercise of the police power.

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*These regulations as to sales of liquors and the conduct of the dispensary and its officials are a complete answer to the charge that profit and commercial enterprise are the *primal* objects of the dispensary law. If that were so—if profit and not *regulation* were the object of the law—the doors would be thrown wide open instead of restrictions being placed upon sales. Undoubtedly, but for these regulations *more* sales and more *profits* could be made.—F. H. M.

There is nothing in the act showing that its PRIMARY *object is the raising of revenue.* The sales are to be made under rules adopted by the county board of control, and approved by the State board of control. It is certainly possible for the objects of the act to be carried into effect under proper rules adopted for that purpose. *It is within the power of the boards of control to eliminate the profit feature altogether.* It is presumed that public officials will discharge the duties of office in a lawful manner until the contrary appears. When a case is brought before this court contesting the legality of the rules adopted by the boards of control, it will be time enough then for this court to pass upon the revenue feature. Suffice it to say, no such question is now before us.

* * * * * * *

Objection is made as to the constitutionality of the act on the ground that it creates a monopoly. Those interposing this objection likewise assume that it is not a police measure. The objection is fully met by the decision of the court in the Slaughter House cases, *supra*, in which the court says: "That wherever the legislature has the right to accomplish a certain result, and that result is best attained by means of a corporation, it has the right to create such a corporation, and to endow it with the power necessary to effect the desired lawful purpose, seems hardly to admit of debate." Tied. Lim., 318, says: "If it is lawful for the State to prohibit a particular business altogether, or to make a Government monopoly of it, the pursuit of such business would, if permitted to any one, be a privilege or franchise, and, being like any other franchise, may be made exclusive. This is but a logical consequence of the admission that the State has the power to prohibit the trade altogether. Such an admission is fatal to a resistance of the power to make it a monopoly." *The doctrine of "monopoly" cannot be applied to a State in exercising its governmental functions.*

* * * * * * *

The next objection interposed by respondent is that the act is in violation of section 41, art. I, of the constitution of this State. That section is as follows: "The enumeration of rights in this constitution shall not be construed to impair or deny others retained by the people, and all powers not herein delegated remain with the people."

* * * * * * *

It is contended that the foregoing section prevents the legislature from embarking the State in a commercial enterprise. We have no doubt that if such was the object of the act, and it was not intended as a police measure, it would be unconstitutional, even in the absence of sec. 41, art. I. As we have said, if the act is not a police measure, it is unconstitutional. *It is quite a different thing, however, when trade is simply an* INCIDENT *to a police regulation. Buying and selling on the part of the Federal, State, and municipal governments take place every day, and as long as the buying and selling are in pursuance of police regulations they are entirely free from legal objection. The Federal Government sells liquor and other articles that they have seized as contraband. Articles are purchased by the State to keep up the penitentiary and asylum and other public institutions and enterprises. We see it buying a farm to utilize the convict labor of the State, and selling the produce made on the farm. Municipal governments have the right to buy and dispose of property in administering their governmental affairs. The very distinction for which we contend is pointed out in the case of Mauldin v. City Council,* 33 *S. C.*, 1. *In that case the court showed that it was not wrong for the city to buy and sell for a public purpose, but that the act only became illegal when it was for a private purpose. We think the case was properly decided, and that the decision rested upon this distinction.*

The case of Beebe *v.* State, 6 Ind., 501, was upon the construction of a statute of Indiana somewhat similar to the act in question, and is relied upon as an authority to sustain the proposition that the State cannot take direct control and management of the liquor traffic. In that case the court uses the following language: "The business [the manufacture and sale of liquor] was, at and before the organization of the Government, and is properly at all times, a private pursuit of the people, as much so as the manufacture and sale of *brooms, tobacco, clothes,* and the dealing in *tea, coffee* and *rice,* and the raising of *potatoes*" (italics ours).

This case is in conflict with the distinction made between liquor and the ordinary commodities of life as enunciated in the case of Crowley *v.* Christensen, *supra;* Black Intox. Liq., *supra;* State *v.* Turner, 18 S. C., 106; and other authorities hereinbefore mentioned. If liquor is to be placed on the same footing with the articles mentioned in the Indiana case, then that decision was right; but if there is that

distinction for which we contend, then the case is valueless as an authority, being decided on erroneous principles. The principles upon which that case was decided would have forced the court that rendered it to have declared null and void a statute entirely prohibiting the traffic in liquor, although there is no longer any doubt as to the constitutionality of such statutes.

The case of Rippe *v.* Becker (Minn.), 57 N. W., 331, is also relied upon to sustain the constitutional objection to the act of 1893. The title of the act construed in Rippe *v.* Becker was "An act to provide for the purchase of a site, and for the erection of a State elevator or warehouse at Duluth for public storage of grain." The syllabus of the case prepared by the court states: "The police power of the State to regulate a business is to be exercised by the adoption of rules and regulations as to the manner in which it shall be conducted by others, and not by itself engaging in it." The language of the court, as applying to that case, was proper, and we think the case was properly decided *in the light of the distinction between liquor and the ordinary commodities of life* which we have pointed out. There was nothing in the business dangerous to the health, morals, and safety of the people, and the act should have been declared null and void.

Respectfully submitted.

FRANKLIN H. MACKEY,
Attorney for Appellant.

APPENDICES.

APPENDIX No. 1.

The Dispensary Law of South Carolina.

PROVISION OF THE CONSTITUTION 1895.

ART. VIII., SEC. 2. In the exercise of the police power the General Assembly shall have the right to prohibit the manufacture and sale and retail of alcoholic liquors or beverages within the State. The General Assembly may license persons or corporations to manufacture and sell and retail alcoholic liquors or beverages within the State under such rules and restrictions as it deems proper; or the General Assembly may prohibit the manufacture and sale and retail of alcoholic liquors and beverages within the State, *and may authorize and empower the State, county and municipal officers, all or either, under the authority and in the name of the State, to buy in any market and retail within the State liquors and beverages in such packages and quantities, under such rules and regulations as it deems expedient: Provided*, That no license shall be granted to sell alcoholic beverages in less quantities than one-half pint, or to sell them between sundown and sunrise, or to sell them to be drunk on the premises: *And provided, further*, That the General Assembly shall not delegate to any municipal corporation the power to issue licenses to sell the same.

The Dispensary Act of 1893.

[So. Ca. Stats., vol. XXI, p. 430.]

AN ACT TO DECLARE THE LAW IN REFERENCE TO, AND FURTHER REGULATE THE USE, SALE, CONSUMPTION, TRANSPORTATION AND DISPOSITION OF, ALCOHOLIC LIQUIDS OR LIQUORS WITHIN THE STATE OF SOUTH CAROLINA, AND TO POLICE THE SAME.

SECTION 1. *Be it enacted* by the Senate and House of Representatives of the State of South Carolina, now met and sit-

ting in General Assembly, and by the authority of the same, That the manufacture, sale, barter or exchange, receipt, acceptance, delivery, storing and keeping in possession, within this State, of any spirituous, malt, vinous, fermented, brewed (whether lager or rice beer) or other liquors, or any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage, by any person, firm or corporation; the transportation, removal, the taking from the depot or other place by consignee or other person, or the payment of freight or express or other charges by any person, firm, association or corporation upon any spirituous, malt, vinous, fermented, brewed (whether lager, rice or other beer) or other liquor or any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage, except as is hereinafter provided, is hereby prohibited under a penalty of thirty days' imprisonment or one hundred dollars' fine for each offense. All such liquors, except when bought from a State officer authorized to sell the same or in possession of one, are declared to be contraband and against the morals, good health and safety of the State, and may be seized wherever found, without warrant, and turned over to the State Commissioner.

SEC. 2. The Governor, the Attorney-General and the Comptroller-General shall, *ex officio*, constitute a State Board of Control to carry out the provisions of this Act.

SEC. 3. That the Governor shall, at the expiration of the term of the present Commissioner, and at the expiration of every two years thereafter, appoint a Commissioner, which appointment shall be submitted to the Senate at its next session for its approval; said Commissioner shall be believed by the Governor to be an abstainer from intoxicants, and shall, under such rules and regulations as may be made by the State Board of Control, purchase all intoxicating liquors for lawful sale in this State, and furnish the same to such persons as may be designated as Dispensers thereof, to be sold as hereafter prescribed in this Act. Said Commissioner shall reside, and have his place of business, in the city of Columbia, in this State, and hold his office two years from appointment and until another be appointed in his stead. He shall be subject to removal for cause by the State Board of Control. He shall qualify and be commissioned the same as other State officers, and receive an annual salary of

$3,000, payable at the same time and in the same manner as is provided for the payment of the salaries of State officers. He shall be allowed a bookkeeper, who shall be paid in the same manner a salary of $1,200, and such other assistants as in the opinion of the Board of Control may be deemed necessary. He shall not sell to the County Dispensers any intoxicating or fermented liquors except such as have been tested by the chemist of the South Carolina College and declared to be pure: *Provided*, That said State Board of Control shall have authority to appoint such assistants as they may find necessary to assist the chemist of the South Carolina College in making the analyses required by this Act, and the said State Board of Control may fix such reasonable compensation, if any, as they may deem proper for the services rendered by such chemist or such assistants. The State Commissioner shall deposit all amounts received by him from sales to County Dispensers or others with the Treasurer of the State under such rules as may be made by the State Board of Control to insure the faithful return of the same, and the State Treasurer shall keep a separate account with said fund, from which the Commissioner shall draw from time to time, upon warrants duly approved by the Chairman of said Board, the amounts necessary to pay the expenses incurred in conducting the business. All rules and regulations governing the said Commissioner in the purchase of intoxicating liquors, or in the performance of any of the duties of his office, where the same are not provided for by law, shall be prescribed by the State Board of Control. He shall, before entering upon the duties of his office, execute a bond to the State Treasurer, with sufficient sureties, to be approved by the Attorney-General, in the penal sum of ten thousand dollars, ($10,000) for the faithful performance of the duties of his office. In all purchases or sales of intoxicating liquors made by said Commissioner as contemplated in this Act, the Commissioner shall cause a certificate to be attached to each and every package containing said liquors when the same is shipped to him from the place of purchase, or by him to the County Dispensers, certified by his official signature and seal, which certificate shall state that liquors contained in said package have been purchased by him for sale within the State of South Carolina, or to be shipped out of the State under the laws of said State; and without such certificate any package containing liquors

which shall be shipped out of the State, or shipped from place to place within the State, or delivered to the consignee by any railroad, express company or other common carrier or be found in the possession of any common carrier, shall be regarded as contraband and may be seized, without warrant, for confiscation, and such common carrier shall be liable to a penalty of five hundred dollars for each offense, to be recovered against said common carrier in any Court of competent jurisdiction by summons and complaint, proceedings to be instituted by the Solicitor of any circuit, with whom evidence may be lodged by any officer or citizen having knowledge or information of the violation; and any person attaching or using such certificate without the authority of the Commissioner, or any counterfeit certificate, for the purpose of securing the transportation of any intoxicating liquors out of or within this State in violation of law, shall upon conviction thereof be punished by a fine of not less than five hundred dollars and imprisonment in the Penitentiary for not less than one year for each offense.

SEC. 4. Said Commissioner shall make a printed quarterly statement, under oath, of all liquors sold by him, enumerating the different kinds and quantity of each kind, the price paid and the terms of payment, and to whom sold; also the names of the parties from whom the liquor was purchased, and their place of business and date of purchase, which statement shall be filed with the State Board of Control.

SEC. 5. The State Commissioner shall before shipping any liquors to Dispensers, except lager beer, cause the same to be put into packages of not less than one-half pint nor more than five gallons, and securely seal the same, and it shall be unlawful for the Dispenser to break any such package or open the same for any reason whatever. He shall sell by the package only, and no person shall open the same on premises: *Provided*, This Section shall not apply to malt liquors shipped in cases, or bottles thereof shipped in barrels, and such malt liquors may be sold by the County Dispenser in such quantities of not less than one pint as he may see proper: *Provided*, The same shall not be drunk on the premises. Dispensers shall open their places of business and sell only in the day time, under such rules as may be made by the State Board of Control.

SEC. 6. It shall be the duty of the State Board of Control to appoint a County Board of Control, composed of three per-

sons believed by said Board not to be addicted to the use of intoxicating liquors, who shall hold their office for a term of two years, and until their successors are appointed. Said County Board of Control shall be subject to removal for cause by the State Board of Control. Said County Board shall make such rules as will be conducive to the best management of the sale of intoxicating liquors in their respective Counties: *Provided*, All such rules shall be submitted to the State Board and approved by them before adoption. Said County Board of Control shall qualify and be commissioned as are other County officers, without fees therefor.

SEC. 7. Applications for position of County Dispenser shall be by petition, signed and sworn to by the applicant and filed with the County Board of Control at least ten days before the meeting at which the application is to be considered, which petition shall state the applicant's name, place of residence, in what business engaged, and in what business he has been engaged two years previous to filing petition; that he is a citizen of the United States and of South Carolina; that he has never been adjudged guilty of violating the law relating to intoxicating liquors, and is not a keeper of a restaurant or place of public amusement, and that he is not addicted to the use of intoxicating liquors as a beverage. This permit or renewal thereof shall issue only on condition that the applicant shall execute to the County Treasurer a bond in the penal sum of three thousand dollars, with good and sufficient sureties, conditioned that he will well and truly obey the laws of the State of South Carolina, now or hereafter in force, in relation to the sale of intoxicating liquors; that he will pay all fines, penalties, damages and costs that may be assessed or recorded against him for violation of such laws during the term for which said permit or renewal is granted, and will not sell intoxicating liquors under his permit at a price other than that fixed by State Board of Control. Said bond shall be for the use of the County or any person or persons who may be damaged or injured by reason of any violation on the part of the obligor of the law relating to intoxicating liquors purchased or sold during the term for which said permit or the renewal thereof is granted. The said bond shall be deposited with the County Treasurer, and suit thereon shall be brought at any time by the Solicitor or any person for whose benefit the same is given; and in case the conditions thereof,

or any of them, shall be violated, the principal and sureties thereon shall also be jointly and severally liable for all civil damages, costs and judgments that may be obtained against the principal in any civil action brought by wife, child, parent, guardian, employer or other person, under the provision of the law. All other moneys collected for breaches of such bond shall go into the County treasury. Said bond shall be approved by the County Board of Control under the rules and laws applicable to the approval of official bonds.

SEC. 8. There may be one or more County Dispensers appointed for each County, the place of business of each of whom shall be designated by the County Board, but the State Board must give consent before more that one Dispenser can be appointed in any County; and when the County Board designates a locality for a Dispensary, ten days' public notice of which shall be given, it shall be competent for a majority of the voters of the township in which such Dispensary is to be located to prevent its location in such township by signing petitions addressed to the County Board requesting that no Dispensary be established in that township, whereupon some other place may be designated. The County Board may in its discretion locate a Dispensary elsewhere than in an incorporated town in the Counties of Beaufort and Horry and no other: *Provided, however,* That any County, town or city wherein the sale of alcoholic liquors was prohibited by law prior to July 1st, 1893, may secure the establishment of a Dispensary within its borders in the following manner: Upon petition signed by one-fourth of the qualified voters of such County, town or city wishing a Dispensary therein being filed with the County Commissioners or Town or City Council, respectively, they shall order an election submitting the question of Dispensary or no Dispensary to the qualified voters of such County, town or city, and shall prescribe the rules, regulations, returns, ballots and notice of such election, and shall declare the result; and if a majority of the ballots cast be found and declared to be for a Dispensary, then a Dispensary shall be established in said County, town or city: *Provided,* That Dispensaries may be established in the Counties of Williamsburg and Marion without such election on compliance with the other requirements of this Act: *Provided,* That nothing in this Act con-

tained shall be so construed as to prohibit persons resident in Counties which shall elect to have no Dispensary from procuring liquors from Dispensaries in other Counties, or County Dispensers from shipping same to their places of residence under proper labels or certificates.

SEC. 9. If the application for the position of Dispenser be granted, it shall not issue until the applicant shall make and subscribe an oath, before some officer authorized by law to administer oaths, which shall be endorsed upon the bond, to the effect and tenor the following: "I,—— ——, do solemnly swear (or affirm) that I will well and truly perform all and sigular the conditions of the within bond, and keep and perform the trusts confided in me to purchase, keep and sell intoxicating liquors. I will not sell, give or furnish to any person any intoxicating liquors otherwise than is provided by law, and especially I will not sell or furnish intoxicating liquors to any minor, intoxicated person or persons who are in the habit of becoming intoxicated, and I will make true, full and accurate returns to the County Board of Control the first Monday of each month of all certificates and requests made to or received by me, as required by law, during the preceding month; and such returns shall show every sale and delivery of such liquors made by or for me during the month embraced therein, and the true signature to every request received and granted; and such returns shall show all the liquors sold or delivered to any and every person as returned." Upon taking said oath and filing bond as hereinbefore provided, the County Board of Control shall issue to him a permit authorizing him to keep and sell intoxicating liquors as in this Act provided, and every permit so granted shall specify the building, giving street and number or location in which intoxicating liquors may be sold by virtue of the same, and the length of time in which the same shall be in force, which in no case shall exceed twelve months. Permits granted under this Act shall be deemed trusts reposed in the recipients thereof, not as a matter of right, but of confidence, and may be revoked upon sufficient showing by order of the County Board of Control; and upon the removal of any County Dispenser, or upon demand of the County Board of Control, he shall immediately turn over to the County Board of Control all liquors and other property in his possession belonging to the State or County. Said County Board of Control shall be

charged with the duty of prosecuting the County Dispenser, or any of his employees, who may violate any of the provisions of this Act. On the death, resignation or removal of a County Dispenser, or expiration of his term of office, the County Board shall appoint his successor.

SEC. 10. The County Board of Control shall use as their office the office of the County Commissioners of their respective Counties, and the clerk of the Board of County Commissioners shall serve as their clerk. They shall preserve, as part of the records and files of their office, all petitions, bonds and other papers pertaining to the granting or revocation of permits, and keep suitable books in which bonds and permits shall be recorded. The books shall be furnished by the County like other public records. The County Board of Control shall designate or provide a suitable place in which to sell the liquors. The members of the County Board of Control shall meet once a month, or oftener, on the call of the Chairman, and for their services they shall each receive a per diem of two dollars, and five cents mileage each way, and their clerk shall receive two dollars per day for the days actually employed as such, but they shall not receive compensation for more than thirty days in any one year. They shall, upon the approval of the State Board of Control, employ such assistants for the County Dispenser as may be necessary. The Dispenser and his assistants shall receive such compensation as the State Board of Control may determine. All profits, after paying all expenses of the County Dispensary, shall be paid one-half to the County treasury and one-half to the municipal corporation in which it may be located, such settlements to be made quarterly: *Provided*, That if the authorities of any town or city, in the judgment of the State Board of Control, do not enforce this law, the State Board may withhold the part going to the said town or city and use it to pay State Constables.

SEC. 11. Before selling or delivering any intoxicating liquors to any person, a request must be presented to the County Dispenser, printed or written in ink, dated of the true date, stating that he or she is of age, and the residence of the signer for whom or whose use the liquor is required, the quantity and kind requested, and his or her true name; and the request shall be signed by the applicant in his own true name and signature, attested by the County Dispenser

or his clerk who receives and files the request. But the request shall be refused if the County Dispenser filling it personally knows the person applying is a minor, that he is intoxicated, or that he is in the habit of using intoxicating liquors to an excess; or if the applicant is not so personally known to said County Dispenser, before filling said order or delivering said liquor he shall require the statement of a reliable and trustworthy person of good character and habits, known personally to him, that the applicant is not a minor, and is not in the habit of using intoxicating liquors to an excess.

SEC. 12. Requests for the purchase of liquor shall be made upon blanks furnished by the County Auditor, in packages of one hundred each, to the County Dispensers, from time to time as the same shall be needed, and shall be numbered consecutively by the Auditor. The blanks aforesaid shall be furnished to the County Auditor by the State Board of Control, in uniform books like bank checks, and the date of delivery shall be endorsed by the County Auditor on each book, and receipt taken therefor and preserved in his office. The Dispenser shall preserve the application in the original form and book, except the filling of the blanks therein, until returned to the County Auditor. When return thereof is made the County Auditor shall endorse thereon the date of return, and file and preserve the same to be used in the quarterly settlements between such Dispenser and the County Treasurer. All unused or mutilated blanks shall be returned or accounted for before other blanks are issued to such County Dispenser.

SEC. 13. On or before the tenth day of each month each Dispenser shall make full returns to the County Auditor of all requests filled by him and his clerks during the preceding month, upon blanks to be furnished by the State Board of Control for that purpose, and accompany the same with an oath, duly taken and subscribed before the County Auditor or a Notary Public, which shall be in the following form, to wit: "I, —— ——, being duly sworn, state on oath that the requests for liquors herewith returned are all that were received and filled at my place of business under my permit during the month of ——, 189–; that I have carefully preserved the same, and that they were filled up, signed and attested at the date shown thereon, as provided by law; that said requests were filled by delivering the

quantity and kind of liquors required, and that no liquors have been sold or dispensed under my permit during said month except as shown by the requests herewith returned; and that I have faithfully observed and complied with the provisions of my bond and oath taken by me, thereon endorsed, and with all the laws relating to my duties in the premises."

SEC. 14. Upon failure of any Dispenser to make the returns to the Auditor as herein required, it shall be the duty of said Auditor to report such failure to the State Board of Control, and the said State Board of Control shall immediately order the County Board to summon said delinquent Dispenser to appear before them and show cause why his permit should not be revoked; and if the cause shall not be shown to the satisfaction of the County Board of Control, they shall immediately annul said permit and give public notice thereof; and the Circuit Solicitor shall proceed to enforce the penalties prescribed in this Act for such violation against said County Dispenser at the next succeeding term of Court in the County in which such permit is held; and any Dispenser who shall sell or dispense any intoxicating liquors after his permit shall have been revoked shall, upon conviction thereof, be fined not less than five hundred ($500) dollars and be imprisoned for six months. If any Dispenser or his clerk shall purchase any intoxicating liquors from any other person except the State Commissioner, or if he or they, or any person or persons in his or their employ, or by his or their direction, shall sell or offer for sale any liquors other than such as have been purchased from the State Commissioner, or shall adulterate or cause to be adulterated any intoxicating, spirituous or malt liquors which he or they may keep for sale under this Act, by mixing with same coloring matter or any drug or ingredient whatever, or shall mix the same with other liquors of different kind or quality, or with water, or shall sell or expose for sale such liquors so adulterated, knowing it to be such, or shall change the label upon any box, bottle or package, he or they shall be guilty of a misdemeanor and be fined in a sum of not less than two hundred dollars or imprisonment for not less than six months.

SEC. 15. No person, firm, association or corporation shall manufacture for sale, sell or keep for sale, exchange, barter, or dispense, any liquors containing alcohol, for any purpose

whatever, otherwise than as provided in this Act. Dispensers as herein provided shall alone be authorized to sell and dispense such liquors, and all permits must be procured as herein provided from the County Board of Control: *Provided*, That the manufacturers of distilled, malt or vinous liquors who are doing business in the State shall be allowed to sell to no person in this State except the State Commissioner and to parties outside the State, and the State Commissioner shall purchase his supplies from brewers and distillers in this State where their product reaches the standard required by this Act: *Provided*, Such supplies can be purchased as cheaply there as elsewhere. Every package, barrel or bottle of such liquors shipped beyond the limits of this State shall have thereon the certificate of the State Commissioner allowing same, otherwise it shall be liable to confiscation, and the railroad carrying it shall he punished as in Section three: *And provided*, That any person shall have the right to make wine for his or her own use from grapes or other fruits.

SEC. 16. Every Dispenser shall keep a strict account of all liquors received by him from the State Commissioner, in a book kept for that purpose, which shall be subject at all times to the inspection of the Circuit Solicitor, any peace officer or grand juror of the County, or of any citizen, and such book shall show the amount and kind of liquors procured, the date of receipt and amount sold, and the amount on hand of each kind for each month. Such book shall be produced by the party keeping the same, to be used as evidence on trial of any prosecution against him, on notice duly served that the same will be required as evidence.

SEC. 17. The payment of the United States special tax as a liquor seller, or notice of any kind in any place of resort, or in any store or shop, indicating that alcoholic liquors are there sold, kept or given away, shall be held to be *prima facie* evidence that the person or persons paying said tax and the parties displaying such notices are acting in violation of this Act, and unless said person or parties are selling under permit as prescribed by this Act they shall be punished by a fine not exceeding one hundred ($100) dollars or imprisonment not more than thirty days.

SEC. 18. Licensed druggists conducting drug stores and manufacturers of proprietary medicines are hereby authorized to purchase of Dispensers of the Counties of their residence intoxicating liquors (not including malt) for the pur-

pose of compounding medicines, tinctures and extracts that cannot be used as a beverage. The Dispensers shall not charge such licensed druggists more than ten per cent. net profit for liquors so sold. Such purchaser shall keep a record of the uses to which the same are devoted, giving the kind and quantity so used, and quarterly they shall make and file with the County Auditor and with the County Board of Control sworn reports, giving a full and true statement of the quantity and kinds of such liquors purchased and used, the uses to which the same have been devoted, and giving the name of the Dispenser from whom the same was purchased, and the dates and quantities so purchased, together with an invoice of each kind still in stock and kept for such compoundings. If said licensed druggist shall sell, barter, give away or exchange or in any manner dispose of said liquors for any purpose other than authorized by this Section, he shall upon conviction forfeit his license and be liable to all penalties, prosecutions and proceedings at law and in equity provided against persons selling without permit, and upon such conviction the Clerk of the Court shall, within ten days after such judgment or order, transmit to the Board of Pharmaceutical Examiners the certified record thereof, upon receipt of which the said Board shall strike the name of the said druggist from the list of pharmacists and revoke his certificate: *Provided*, That nothing herein contained shall be construed to authorize the manufacture or sale of any preparation or compound, under any name, form or device, which may be used as a beverage which is intoxicating in its character: *And provided, further*, That the State Commissioner shall be authorized to sell to manufacturing chemists and wholesale druggists alcohol by the barrel at cost.

SEC. 19. If any person shall make any false or fictitious signature, or sign any name other than his or her own, to any paper required to be signed by this Act, without being authorized so to do, or make any false statement in any paper, request or application signed to procure liquors under this Act, the person so offending shall be guilty of a misdemeanor, and upon conviction therefor shall be punished by a fine of not more than twenty-five dollars or be imprisoned not more than thirty days.

SEC. 20. If any Dispenser, or his clerk, shall make false oath touching any matter required to be sworn to under the provisions of this Act, the person so offending shall, upon

conviction, be punished as provided by law for perjury. If any County Dispenser shall purchase or procure any intoxicating liquors from other person than the State Commissioner, or make any false returns to the County Auditor, or use any request for liquors for more than one sale, in any such case he shall be deemed guilty of a misdemeanor, and upon conviction be punished by a fine of five hundred dollars or six months' imprisonment.

SEC. 21. Every person who shall directly or indirectly keep or maintain, by himself, or by associating or combining with others, or who shall in any manner aid, assist or abet in keeping or maintaining, any club room or other place in which any intoxicating liquors are received or kept for use, barter or sale as a beverage, or for distribution or division among the members of any club or association by any means whatever, and every person who shall receive, barter, sell, assist, or abet another in receiving, bartering or selling, any alcoholic liquors so received or kept, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed one hundred dollars or 30 days' imprisonment: *Provided*, That the State Board of Control shall have the power, upon a proper showing and under such rules as they may adopt, to exempt hotels where tourists or health-seekers resort from being considered nuisances or as violating this Act by reason of any managers of such hotels dispensing liquors bought from the Dispensary, by the bottle, either night or day, among the *bona fide* guests of such hotel; but before any such exemption shall be granted the State Board of Control shall require the manager of such hotel to give a good and sufficient bond, in the penal sum of three thousand dollars, conditioned for the observance of all the rules, regulations and restrictions prescribed and imposed by the said Board and with all the requirements of this Act; and it shall be lawful for any Constable or officer thus empowered under this Act to enter such hotel and search it, at any time, day or night, without a warrant, for contraband liquors.

SEC. 22. All places where alcoholic liquors are sold, bartered or given away in violation of this Act, or where persons are permitted to resort for the purpose of drinking alcoholic liquors as a beverage, or where alcoholic liquors are kept for sale, barter or delivery in violation of this Act, are hereby declared to be common nuisances, and any per-

son may go before any Trial Justice in the county and swear out an arrest warrant, on personal knowledge or on information and belief, charging said nuisance, giving the names of witnesses, against the keeper or manager of such place and his aids and assistants, if any, and such Trial Justice shall direct such arrest warrant either to the Sheriff of the County or to any special Constable, commanding said defendant to be arrested and brought before him to be dealt with according to law, and at the same time shall issue a search warrant, in which the premises in question shall be particularly described, commanding such Sheriff or Constable to thoroughly search the premises in question and to seize all alcoholic liquors found thereon, and dispose of them as provided in Section 33, and shall also seize all vessels, bar fixtures, screens, bottles, glasses and appurtenances apparently used or suitable for use in retailing liquors, to make a complete inventory thereof, and deposit the same with the Sheriff. That under the arrest warrant the defendant shall be arrested and brought before such Trial Justice and the case shall be disposed of as in case of other crimes beyond his jurisdiction, except that when he commits or binds over the parties for trial to the next term of the Court of General Sessions for the County he shall make out every paper in the case in duplicate and file one copy of the proceedings with the Clerk of the Court for the County and immediately transmit the other copy to the Solicitor of the Circuit, whereupon said Solicitor shall at once apply to the Circuit Judge, at chambers, within that Circuit, for an order restraining the defendants, their servants or agents, from keeping, receiving, bartering, selling or giving away any alcoholic liquors until the further order of the Court. Such Circuit Judge is hereby authorized, empowered and required to grant the said restraining order, without requiring a bond or undertaking, upon the hearing or receipt by him of said papers from the Court of said Trial Justice by the hands of the Solicitor; and any violation of said restraining order before the trial of the case shall be deemed a contempt of Court and punished as such by said Judge or Court, as for the violation of an order of injunction. Upon conviction of said defendants of maintaining said nuisance at the trial, they, or any of them, shall be deemed guilty of a misdemeanor, punishable by imprisonment in the State Penitentiary for a term of not less than three months, or a fine of not less than two hundred dol-

lars, or by both, in the discretion of the Court, and the restraining order shall be made perpetual. The articles covered by the inventory which were retained by the Sheriff shall be forfeited to the State and sold and the net proceeds sent to the State Commissioner, and the Sheriff shall forthwith proceed to dispose of the alcoholic liquors covered by said inventory as provided for in this Act as when other liquors are seized. The finding of such alcoholic liquors on such premises, with satisfactory evidence that the same was being disposed of contrary to this Act, shall be *prima facie* evidence of the nuisance complained of. Liquors seized as hereinbefore provided, and the vessels containing them, shall not be taken from the custody of the officer in possession of the same by any writ of replevin or other process while the proceedings herein provided are pending. No suit shall lie for damages alleged to arise by seizure and detention of liquors under this Act. Any person violating the terms of any restraining order granted in such proceedings shall be punished for contempt, by a fine of not less than two hundred dollars nor more than one thousand dollars, and by imprisonment in the State Penitentiary not less than ninety days nor more than one year. In contempt proceedings arising out of the violation of any injunction granted under the provisions of this Act, the Court, or in vacation the Judge thereof, shall have power to try summarily and punish the party or parties guilty, as required by law. The affidavits upon which the attachment for contempt issues shall make a *prima facie* case for the State. The accused may plead in the same manner as to an indictment in so far as the same is applicable. Evidence may be oral or in the form of affidavits, or both; the defendant may be required to make answers to interrogatories, either written or oral, as in the discretion of the Court or Judge may seem proper; the defendant shall not necessarily be discharged upon his denial of the fact stated in the moving papers. The Clerk of the Court shall, upon the application of either party, issue subpœnas for witnesses, and except as above set forth the practice in such contempt proceedings shall conform as nearly as may to the practice in the Court of Common Pleas.

SEC. 23. The State Commissioner, under rules and regulations provided by the State Board of Control, may enter into contracts with responsible grape growers in this State for

the sale of domestic wines through the Dispensary, so as to encourage grape growing in this State, and in furtherance of this object not more than ten per cent. profit to the Dispensary over the expenses of bottling, labeling, freightage, etc., shall be charged for the handling of such wines. The manager of every registered distillery of liquor in this State shall report quarterly to the State Commissioner, showing the number of gallons of each kind of liquor on hand, manufactured or disposed of during the quarter, and if the said report fail to correspond with the return of said distillery to the United States Internal Revenue Collector for this State, or it is shown that said manager has disposed of liquor contrary to this Act, said distillery shall be deemed to be a common nuisance, and the said manager and his aiders and assistants and the premises shall be proceeded against as in this Act provided as to places where liquors are sold contrary to this Act.

SEC. 24. In all cases of places where liquors are unlawfully kept or stored, the same not being in an open house or exposed to view, and a search being necessary, upon affidavit to that effect, or on information and belief that contraband liquor is in such place, a search warrant shall be issued by a Justice, Judge or Trial Justice, or Mayor, or Intendant of a city or town, to whom application is made, empowering a Constable, or any person who may be deputized, to enter the said place by day time or in the night time and to search and examine the said premises for the purpose of seizing the said contraband liquors therein concealed, kept or stored, which said liquor when so seized shall be disposed of as hereinafter provided.

SEC. 25. That any of the liquors set forth in Section one (1) of this Act which are contraband may be seized and taken without warrant by any State Constable, Sheriff or policeman, while in transit or after arrival, whether in possession of a common carrier, depot agent, express agent, private person, firm, corporation or association, and reported to the State Commissioner at once, who shall dispose of the same as hereinafter provided: *Provided*, That liquors purchased outside the State, owned and conveyed as personal baggage, shall be exempt from seizure when the quantity does not exceed one gallon.

SEC. 26. That the possession of said illicit liquors is hereby prohibited and declared unlawful, and any obligation, note

or indebtedness contracted in their sale or transportation is declared to be absolutely null and void, nor shall any action or suit for the recovery of the same be entertained in any Court in this State.

SEC. 27. That the proceeding against liquor so illegally kept, stored, sold, delivered, transported or being transported shall be considered a proceeding *in rem*, unless otherwise herein provided, elsewhere than at his or her residence.

SEC. 28. That the carriage, transportation, possession, removal, sale, delivery or acceptance of any of the said liquors or liquids in any package, cask, jug, box or other package, under any other than the proper name or brand known to the trade as designating the kind and quantity of the contents of the casks, packages or boxes containing the same or causing such removal, acceptance, transportation, taking into possession, or any such delivery, shall work the forfeiture of said liquors or liquids and casks or packages, and the person or persons so offending, knowingly, be subject to pay a fine of not more than five hundred dollars or imprisonment for the term of not longer than six months, and the wrongful name, address, mark, stamp or style on such liquor when seized shall be considered evidence *prima facie* of guilt. The books and way bills of the common carrier may be examined to trace said liquor to the shipper, who shall be liable, upon conviction, in a like penalty.

SEC. 29. That all Constables, Deputy Constables, Sheriffs or municipal policemen shall have the right, power and authority, and it shall be their duty, whenever they are informed or suspect that any such suspicious package in possession of a common carrier contains alcoholic liquors or liquids, to detain the same for examination for the term of twenty-four hours without any warrant or process whatever.

SEC. 30. That any interference by any person with, obstruction or resistance of, or abusive language to, any officer or person in the discharge of the duties herein enjoined, or the use of abusive language by any such officer or person to any other person or persons, shall, upon conviction, be deemed guilty of a misdemeanor and be punishable by a fine of not more than one hundred dollars or imprisoned for the term of not more than 30 days.

SEC. 31. In all cases of seizure of any goods, wares or merchandise hereafter or heretofore made, as being subject to forfeiture under any provision of this Act or the former Act,

which, in the opinion of the officer or person making the seizure are of the appraised value of fifty dollars or more, the said officer or person shall proceed as follows: *First.* He shall cause a list containing a particular description of the goods, wares or merchandise seized to be prepared in duplicate and an appraisement thereof to be made by three sworn appraisers, to be selected by him, who shall be respectable and disinterested citizens of the State of South Carolina, residing within the County wherein the seizure was made. Said list and appraisement shall be properly attested by the said officer or person and the said appraisers, for which service each of the said appraisers shall be allowed the sum of one dollar, to be paid by the State Commissioner. *Second.* If the said goods are believed by the officer making the seizure to be of less value than fifty dollars, no appraisement shall be made. The said officer or person shall proceed to publish a notice for three weeks, in writing, at three places in the County where the seizure was made, describing the articles and stating the time and place and cause of their seizure, and requiring any person claiming them to appear and make such claim within thirty days from the date of the first publication of such notice. *Third.* Any person claiming the liquors so seized as contraband, and the vessels containing the same, within the time specified in the notice, may file with the State Commissioner a claim stating his interest in the articles seized, and may execute a bond to the State Commissioner in the penal sum of five hundred dollars, with sureties to be approved by the said State Commissioner, conditioned that in the case of condemnation of the articles so seized the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation; and upon the delivery of such bond to the State Commissioner he shall transmit the same with the duplicate list or description of the goods seized to the Solicitor of the Circuit in which such seizure was made, and said Solicitor shall prosecute the case to secure the forfeiture of said contraband liquors or liquids in the court having jurisdiction. *Fourth.* If no claim is interposed and no bond given within the time above specified, such liquors shall be forfeited without further proceedings, and the State Commissioner shall have the said liquors tested by the State Chemist, and if pure shall sell the same through the State Dispensary as though purchased by him. If not pure, he shall sell the same beyond

the State and deposit the proceeds to the credit of the State Commissioner: *Provided*, That in seizures in quantities less in value than fifty dollars of such illicit liquor, or liquors, the same may be advertised, with other quantities, at Columbia, by the State Commissioner, and disposed of as hereinbefore provided: *Provided, further*, That the claimant of such liquors may give bond in one hundred dollars as when the value is fifty dollars or over, and shall bear the burden of showing before a Trial Justice that he has complied with the law and that the liquor is not liable to seizure.

SEC. 32. That all fermented, distilled or other liquors or liquids containing alcohol, transported into this State, or remaining herein for use, sale, consumption, storage or other disposition, shall, upon introduction and arrival in this State, be subject to the operation and effect of this law to the same extent and in the same manner as though such liquors or liquids had been produced in this State.

SEC. 33. That no person, except as provided in this Act, shall bring into this State, or transport from place to place within this State, by wagon, cart or other vehicle, or by any other means or mode of carriage, any liquors or liquids containing alcohol, under a penalty of one hundred dollars or imprisonment for thirty days for each offense, upon conviction thereof, as for a misdemeanor. Any servant, agent or employee of any persons, corporation or associations, doing business in this State as common carrier, or any person whatsoever, (except an officer seizing or examining the same) who shall remove any intoxicating liquors from any railroad car, vessel or other vehicle of transportation at any place other than the usual and established stations, wharves, depots or places of business of such common carriers within some city or town where there is a Dispensary, and then only for such Dispensary, or who shall aid in or consent to such removal, shall upon conviction be subject to a penalty of fifty dollars or imprisonment for thirty days for every such offense: *Provided*, That said penalty shall not apply to any liquor in transit when changed from car to car to facilitate transportation across the State: *Provided*, That this Section does not apply to liquors purchased from a Dispensary and bearing the proper label or certificate. All liquors in this State, except Dispensary liquors and those passing through consigned to points beyond, shall be deemed contraband and may be seized in transit without warrant. And

any steamboat, sailing vessel, railroad, express company or other common carrier transporting or bringing into this State for sale or use therein, except by the Dispensary, shall suffer a penalty of five hundred dollars and costs for each offense, to be recovered by the Solicitor of the Circuit, or the Attorney-General, by an action brought therefor in any Court of competent jurisdiction. The State Constables, Sheriffs, municipal police or any lawful Constable may enter any railroad car, or express car, or depot, or steamboat, or other vessel, without warrant and make search for such contraband liquors, and may examine the way bills and freight books of said common carriers, and any one interfering with or resisting such officer shall be punished by a fine not exceeding $100 or imprisonment not longer than 30 days.

SEC. 34. That any person detected openly in the act of violating any of the provisions of this Act shall be liable to arrest without warrant, provided a warrant shall be procured within a reasonable time thereafter.

SEC. 35. That violations of any of the Sections of this Act, where punishment upon conviction is not especially provided for, the person or persons or corporations so convicted shall be punished in the discretion of the Court trying the same. All alcoholic liquors, other than domestic wine, and in quantity more than five gallons, which do not have on the packages in which they are contained the labels and certificates going to show that they have been purchased from a State officer authorized to sell them are hereby declared contraband, and on seizure will be forfeited to the State as provided in Section 31: *Provided*, That this Section shall not apply to liquor held by the owners of registered stills. Persons having more than five gallons of liquor elsewhere than at his or her home, which they wish to keep for their own use, may throw the protection of the law around the same by furnishing an inventory of the quantity and kinds to the State Commissioner and applying for certificates to affix thereto. After sixty days from the approval of this Act any liquor found in the State not having such certificates may be seized and confiscated. Persons having more than they wish to use may obtain certificates to ship beyond the limits of the State. Any person affixing, or causing to be affixed, to any package containing alcoholic liquor any imitation stamp or other printed or engraved label or device than those furnished by the State Commissioner shall for

each offense be liable to a penalty of ten days' imprisonment or twenty-five dollars' fine.

SEC. 36. Every person who dispossesses or rescues from a Constable or other officer, or attempts so to do, any alcoholic liquor taken or detained by such officer charged with the enforcement of this law, shall, upon conviction, be imprisoned thirty days or pay a fine of one hundred dollars.

SEC. 37. Any person handling contraband liquor in the night time, or delivering the same, shall be guilty of a misdemeanor, and on conviction shall be punished by imprisonment for thirty days or one hundred dollars' fine.

SEC. 38. Any wagon, cart, boat or other conveyance transporting contraband liquor at night, other than regular passenger or freight steamers and railway cars, shall be liable to seizure and confiscation; and to that end the officer shall cause the same to be appraised by three disinterested citizens, and unless recovered by claim and delivery proceedings and suitable bond shall be advertised and sold and proceeds sent to the State Commissioner.

SEC. 39. Every Dispenser when he sells a package containing liquor shall put a cross mark in ink on the label or certificate thereon, extending from the top to the bottom and from side to side. When any liquor is seized because it has not the necessary certificates and labels required by this Act, the burden of proof shall be upon the claimant of said spirits to show that no fraud has been committed and that the whiskey is not contraband.

SEC. 40. That any railroad, steamboat, express company or other common carrier shall incur a penalty of treble the invoice price of any alcoholic liquors lost or stolen in transit to or from the Dispensary, whether shipped as released or not, such penalty to be recovered by action in any Court of competent jurisdiction.

SEC. 41. That it shall be unlawful for any person to take or to solicit orders, or to receive money from other persons for the purchase or shipment of any alcoholic liquors for or to such other persons in this State, except for liquors to be purchased and shipped from the Dispensary, and any person violating this Section, upon conviction, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment not to exceed thirty days or by a fine not to exceed one hundred dollars.

SEC. 42. It shall be the duty of Sheriffs, Deputy Sheriffs and Constables having notice of the violation of any of the

provisions of this Act to notify the Circuit Solicitor of the fact of such violation, and to furnish him the names of any witnesses within their knowledge by whom such violation can be proven. If any such officer or Solicitor shall willfully fail to comply with the provisions of this Section, he shall, upon conviction, be fined in a sum not less than one hundred dollars nor more than five hundred dollars; and such conviction shall work a forfeiture of the office held by such person; and the Court before whom such conviction is had shall, in addition to the imposition of the fine aforesaid, order and adjudge the forfeiture of his said office.

SEC. 43. The Governor shall have authority to appoint one or more State Constables at a salary of two dollars per day and expenses when on duty, and two Chief Constables at three dollars each per day and expenses, to see that this Act is enforced, the same to be charged to the expense account of the State Commissioner, except as otherwise provided in this Act.

SEC. 44. All Acts or parts of Acts inconsistent with this Act are hereby repealed.

SEC. 45. That wherever in this Act it is provided that process shall issue upon an affidavit based on information and belief, the affidavit shall contain a statement setting forth the sources of information, the facts and grounds of belief upon which the affiant bases his belief.

SEC. 46. This act shall not be held or construed to in any manner repeal or affect laws prohibiting the sale of intoxicating liquors within certain distances of churches and schools.

SEC. 47. That brewers in this State of rice beer heretofore engaged in the manufacture and sale of rice beer containing not more than two per cent. of alcohol shall be allowed thirty days from the approval of this Act to dispose of their manufactured product now on hand.

SEC. 48. That Chapter 7, Title VII., of the Code of Civil Procedure of this State, entitled "Of Provisional Remedies in Civil Actions," shall not apply to any officer or person having duties to perform under this Act, and in no case shall an action lie against any such officer or person for damages to person or property as provided in said Chapter.

SEC. 49. This Act shall take effect immediately upon its approval.

Approved December 23d, A. D. 1893.

APPENDIX No. 2.

The Governor's Message.

The Court of Claims has, in its opinion rendered in this case, quoted from the message of one of the governors of South Carolina, to show that the dispensary system is a commercial enterprise primarily and was not enacted as a police measure. While protesting that no such inference can legitimately be drawn from the language of the message referred to, and also protesting that whatever the personal views of the governor of the State might be as to the purpose of the law, they can have no effect to change the legal construction to be placed upon the language of the statute itself; nevertheless as an answer to the proposition laid down in the court's opinion I give here an extract from the message of the governor of the State to the South Carolina General Assembly beginning January 8, 1901, showing conclusively, as I submit, that the dispensary law is not only on its face a police measure as such, but is so regarded and enforced by the State's officials.

EXTRACTS FROM THE MESSAGE OF GOVERNOR MCSWEENEY TO THE GENERAL ASSEMBLY BEGINNING JANUARY 8, 1901.

THE DISPENSARY.

The dispensary has been well managed during the past year, as the statement of the board of directors and the State commissioner, which will be submitted to you, will show.

The dispensary system and the management of the liquor question have occupied much of the attention of each legislature since the system was inaugurated. The dispensary has also been an issue in every campaign in the State since it was passed and has been more strongly opposed possibly than any other law that was ever placed on the statute books of this State. Every argument that could be brought to bear against it has been presented by some of the ablest intellects of the State, and yet, after a thorough canvass of each county and a presentation of the case to the people, the sys-

tem has been endorsed by decided majorities on four different occasions, and the principle is incorporated in our organic law.

Under the constitution the legislature may license individuals or corporations to sell under the rules and regulations governing the dispensary, or it may prohibit the sale and manufacture of liquors. Both of these plans have been thoroughly and exhaustively argued and advocated before the people, and the verdict every time has been decidedly in favor of the dispensary under the management of the State. This reference is made to emphasize what seems to me to be the duty of every patriotic citizen who loves his State and believes in democratic doctrine and republican institutions, and that duty is to submit to the voice of the people and go to work earnestly and conscientiously to improve and perfect a law which has received so many endorsements from those whom it directly concerns. The courts have held that under the police regulations the State has a right to take charge of the sale of whiskey. The question, when reduced to its last analysis, is not one of principle, but of expediency. What is the best method of dealing with this evil so as to secure the best results? That is the question.

The present system, as it may be improved from time to time, is the best solution yet devised and is growing in public favor. Much of the prejudice that has existed against the law is being removed, and many of those who oppose the system are in favor of the enforcement of the law. As public sentiment grows in its favor it will be easier to enforce it. The mayors and intendants of the towns and cities of the State, in response to a circular which I issued during November, state that the law is well enforced, and that the sentiment of the towns is for a strict enforcement. The exceptions are the cities of Columbia and Charleston and a few counties in which the sale of whiskey is prohibited by law. In fact in those counties in which no dispensaries are established it would conduce to a better enforcement of law, and there would be less illicit sale of whiskey if dispensaries were established. In the cities named the dispensary cannot be rigidly enforced so long as public sentiment upholds violators of the law and grand juries fail to find true bills and petit juries to convict when cases are made and the evidence furnished. As public sentiment grows in favor of the law in these cities and the prejudice against it dies away convictions

for violations will be had, and it can then be more rigidly enforced.

As a rule, however, the law has been well enforced, and it has been with a small constabulary force, but with the aid of the municipal officers. All law is violated. If there were no violators of law and this were an ideal country there would be no need of law or courts to try and punish offenders. The United States Government, with its illimitable resources, has failed to stop all violations of the revenue laws.

The present law might be made a little more explicit in some particulars, for in some respects it will take a judicial deliverance to determine what has been repealed and what re-enacted by the amendment adopted last year, and yet, in its practical operation, the law has worked very well.

While it is important that the law shall not be violated by illicit sale of whiskey, it is equally important that those charged with its administration shall conform to its requirements. If this were more rigidly done public sentiment would grow more rapidly in support of the system. I doubt if there is a dispenser in the State who does not violate the law every day, not with any criminal intent. The law requires that "before selling or delivering any intoxicating liquors to any person a request must be presented to the county dispenser, printed or written in ink, dated of the true date, stating that he or she is of age, and the residence of the signer, for whom or whose use it is required, the quantity and kind required, and his or her true name; and the request shall be signed by the applicant in his own true name and signature, attested by the county dispenser or his clerk, who receives and files the requests. But the requests shall be refused, if the county dispenser filling it personally knows the person applying is a minor, that he is intoxicated, or that he is in the habit of using intoxicating liquors to an excess; or if the applicant is not so personally known to said county dispenser, before filling said order or delivering said liquor, he shall require the statement of a reliable and trustworthy person of good character and habits, known personally to him, that the applicant is not a minor and is not in the habit of using intoxicating liquors to excess." The county dispenser takes an obligation to the effect that he will and another afterwards that he does comply strictly

with this provision and all of the other provisions of the law.

It has become customary for county dispensers to sell to any one who applies to purchase without being identified or without signing the application "in his own true name and signature" and without stating "for whom or whose use it is required." Ample provision is made for the course to be pursued for violations in the administration of the law. The county dispensers are responsible to the county boards of control, and they are appointed by the State board of directors on the recommendation and with the advice and consent of the senator and representatives from each county. That brings the case right up to the door of the members of the General Assembly.

This is a business matter, and as careful and as prudent business judgment should be exercised in the selection of those who are charged with the administration of the law as a prudent business man would exercise in the selection of those whom he would place in charge of his private business. Politics and partisanship should have no part in the selection.

I again commend to you the advisability of abolishing the county boards of control and of devolving their duties upon the mayors or intendants of the towns and the county supervisors of the counties in which dispensaries are located. The towns and counties are directly interested in the proper management of local dispensaries, and the duties thus imposed would not be onerous. I also recommend that county dispensers be elected by the people, as other county officers are elected, for a term of two years. They would then be responsible to the people for a proper conduct of the business placed in their hands.

In the management of the constabulary it has been my aim and purpose to secure men of discretion and judgment, who would perform their duties without fear or favor, and at the same time without causing conflict between themselves and the citizens; and it is source of gratification to me that there has been no conflict.

APPENDIX No. 3.

The Dispensary System and the Loss (?) of Federal Revenue.

As an answer to so much of the opinion of the Court of Claims as advances the argument of loss of revenue to the Government if the dispensary system cannot be taxed I have argued in my brief (p. 23) that this loss of revenue could be many times made up by the increase in the moral and financial well-being of the country where this system of dealing with the liquor problem is adopted. As throwing further light upon the subject and not because I deem the loss-of-revenue argument to have in the slightest degree any bearing upon the legal questions involved in this case, the following historical and statistical note made up from official data may not be uninteresting. The report of the United States Internal Revenue Commissioner for 1892 shows that there were 1040 retail liquor dealers in South Carolina during the year 1891. The mere proposition, agitated about that time, to enact the dispensary law reduced their number to 970 in 1892. In 1894, the year following the enactment of the law, they were reduced to 840; in 1895, to 740; in 1896, when the dispensary constabulary had learned how to deal with these illicit dealers, to 335, and in 1902, to 260—that is to say, one-fourth the number that existed *before* the establishment of the dispensary system. These were of course all illicit dealers, or "blind tigers," as they are facetiously called in South Carolina. Their number is known by the fact that the illicit dealer always pays the special tax of $25 to the United States, as he finds it cheaper to pay that sum than to run the risk of prosecution by the Federal Government. But it does not secure them immunity from the State constabulary, and the message of Governor McSweeney to the South Carolina Legislative Assembly printed in this Appendix shows the manner in which they are unweariedly pursued by the State officials. The report of the U. S. Internal Revenue Office shows that in the year 1900 there were 436 retail liquor dealers paying a special tax of $25 each to the United States Government. Of these 94 were State dis-

pensaries. It is hardly fair to the State to compare the general average of the sales of these illicit dealers with the sales made by the open bar-rooms in non-dispensing States; but, giving the opponents of the dispensary system that advantage, it appears from the table which will be found at the end of this note that in the State of New Jersey the number of liquor dealers to the population in the year 1900 was fifteen times greater than in South Carolina; in New York it was fourteen times greater; in Illinois twelve times; in Indiana ten times; in the neighboring State of Maryland nine times; in Pennsylvania seven times; in Massachusetts five times; in Georgia and North Carolina, two States adjoining a dispensary State, and where there are some dispensary counties and local-option counties, the number in each was only two times greater; while in the *total-prohibition* States of Maine and Kansas there were, respectively, *five* and *six* times as many retail liquor dealers paying a license tax to the United States Government in proportion to the population as there were in the dispensary State of South Carolina.

What volumes do these facts speak in favor of the dispensary system as a police and temperance measure over the total-prohibition system! But there is a more astonishing exhibit than this.

The American Grocer, one of the leading journals of the grocery trade of the United States, published in its issue for March 25, 1903, its annual estimate of what it calls "The Nation's Drink Bill." The estimate is evidently the result of conservative and intelligent work based upon the figures of the United States Bureau of Statistics, and is as follows:

Total amount paid in 1902 by the people of the United States for alcoholic stimulants, including beer.....	$1,172,565,235
Per capita expenditure to the population.....	17.33

The above figures do not include the amount used in the arts and manufactures.

The report of the Board of Directors of the South Carolina Dispensary for 1902 shows the total receipts of the dispensers throughout the State for alcoholic liquors, including beer, to be $2,406,213. The profits received by the State from the beer dispensers were for the same year $60,515.40,

which, upon a 10 per cent. basis, would make their total sales amount to $605,154, making a grand total of $3,011,367 paid for alcoholic stimulants by the people of the State under the dispensary law. These figures, however, do not include the sales made by the so-called "blind tigers," or illicit dealers. These men keep under cover and work in the dark, and it is probable that at least three-fourths of them carry on their business in the two principal cities of the State—Charleston and Columbia, whose combined population scarcely exceeds 85,000. They probably do not, all of them together, sell one-fifth as much liquor as is sold openly and above board by the county dispensers throughout the State with its population of 1,350,000; to those familiar with the conditions surrounding them it is difficult to conceive how their total sales can amount to half a million dollars annually, but conceding that the total sales of these illicit dealers during the year equal the sales made by the dispensers, viz., $3,011,367, then the grand total of the liquor bill of the people of the State of South Carolina for the year 1902 was as follows:

Total sales by dispensers and illicit dealers..... $6,022,734

Placing the total population of the State for 1902 at 1,350,316, or only ten thousand more than the census return for 1900, this is a *per capita* expenditure of within a fraction of $4.45. As we have seen, however, it would be nearer the actual truth to state it at not more than $3 *per capita*. In other words, conservative estimates, based upon official reports, show that under the State's dispensary system the average citizen of South Carolina consumes as a beverage from one-fourth to one-sixth the alcoholic stimulants consumed by the average citizen of the United States. These figures, it is true, are but estimates; but they are based upon *official* reports, State and Federal, and are undoubtedly a close approximation to the real facts. This is what the dispensary system has done and is doing for the State of South Carolina.

Statement of the Number of Retail Liquor Dealers in Some of the Principal States of the Union for the Year 1900 as Compared with the Population of that Year.

State.	Population.	Number of retail liquor dealers.	Number of persons in the State to each liquor dealer.	
South Carolina	1,340,316	436	3,074	
New York	7,268,894	34,044	213	14
Pennsylvania	6,302,115	16,089	391	7*
New Jersey	1,883,669	9,504	195	15
Illinois	4,821,550	18,690	252	12
Indiana	2,516,462	7,980	315	10
Virginia	1,854,184	2,888	642	4½
Massachusetts	2,805,346	4,766	588	5
Georgia	2,216,331	1,254	1,719	2*
Maryland	1,188,044	3,541	335	9
North Carolina	1,893,810	1,537	1,232	2
Maine	694,466	1,151	600	5
Kansas	1,470,495	2,756	507	6

* Nearly. The figures in the last column show (approximately) the ratio between South Carolina and the other States—rating that State as 1. Thus in New York there are 14 times as many liquor dealers as in South Carolina.